

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS (BOSTON)**

DENNIS DIMON)

Plaintiff)

v.)

Civil Action No. 05-11073-MEL)

MICHAEL B. LATTI, LATTI)
ASSOCIATES, LATTI & ANDERSON)
LLP, METROPOLITAN LIFE)
INSURANCE COMPANY, KEMPER)
INSURANCE COMPANY, and)
MORGAN STANLEY DW, INC.,)
Defendants)

**MEMORANDUM OF LAW OF
DEFENDANT KEMPER INSURANCE COMPANY IN SUPPORT OF
ITS MOTION FOR SUMMARY JUDGMENT**

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I. INTRODUCTION

This lawsuit centers on a dispute involving the terms of an annuity policy funding the settlement of an underlying personal injury action that concluded in 1983. Plaintiff has filed suit against four defendants, and has made purported claims against Kemper for breach of contract and negligent misrepresentation. Plaintiff's claims against Kemper cannot be sustained for two separate and independent reasons: (1) both claims are barred by the applicable statutes of limitations; and (2) in any event, Plaintiff cannot establish the essential elements of his claims. For each of these reasons, Kemper is entitled to summary judgment.

II. FACTS

A. Settlement Of The Underlying Personal Injury Action.

In January 1981, Plaintiff was injured while serving as a crew member of the Jenny C. Inc. See Plaintiff's Complaint ("Compl.") at ¶ 10 (attached hereto as Exhibit A). Plaintiff subsequently commenced a personal injury lawsuit styled Dennis Jay Dimon v. Jenny C., Inc., No. 81-0063, in the United States District Court for the District of Rhode Island (the "Underlying Action"). See Transcript of Guardian Ad Litem Hearing ("Guardian Hrg.") (attached hereto as Exhibit B). As his legal counsel in the Underlying Action, Plaintiff retained and was represented by the law firm of Latti Associates.¹ See Compl. at ¶ 12; Deposition Transcript of Michael B. Latti ("Latti Dep.") at 24:23-25:14 (attached hereto as Exhibit C). The Underlying Action ultimately proceeded to trial, where Plaintiff was awarded a verdict in the amount of \$710,000. See Compl. at ¶ 11.

¹ Michael Latti, Esq. ("Mr. Latti") of Latti Associates, and Roger Hughes, Esq. ("Mr. Hughes"), formerly of Latti Associates, acted as Plaintiff's lawyers in the Underlying Action. See Latti Dep. at 24:23-25:14, 26:16-18, 31:7-22. Latti Associates, Mr. Latti, and Mr. Hughes are referred to collectively herein as "Plaintiff's lawyers."

Following the verdict in the Underlying Action, Plaintiff's lawyers agreed to a settlement of the Underlying Action with the defendant, the defendant's primary insurer, and Kemper, which was the defendant's excess insurer.² See Guardian Hrg. at 1:20-23, 9:3-14; Deposition Transcript of William Mensie ("Mensie Dep.") at ex. 5 (attached hereto as Exhibit D).³ The terms of the settlement were negotiated with Plaintiff's lawyers in April, 1983. See Guardian Hrg. at 7:11-8:14, 13:14-14:20, 16:19-23; Mensie Dep. at at ex. 5. The settlement agreement provided that the primary insurer and Kemper would pay to Plaintiff a lump sum in the amount of \$250,000. See Guardian Hrg. at 6:19-20; Mensie Dep. at ex. 5. The settlement agreement further provided, upon Plaintiff's lawyers' insistence, that Kemper would pay an additional lump sum in the amount of \$175,000 so that Plaintiff's lawyers could purchase an annuity to fund a stream of future periodic payments for Plaintiff. See Guardian Hrg. at 7:20-8:4; Mensie Dep. at 79:18-80:11 and at ex. 5.

Specifically, Plaintiff's lawyers advised that they were able to purchase, for a premium of \$175,000, an annuity that would pay out a stream of periodic payments as follows: \$1,450 per month for life, with a 3 % increase compounded annually, and 20 years certain. See Guardian Hrg. at 6:20-23, 7:23-8:4, Mensie Dep. at ex. 5. Plaintiff's lawyers stated that they had obtained this annuity quote from Charter Security Life Insurance Company ("Charter Security Life")

² Several companies traded under the name of Kemper, including "American Motorists Insurance Company." For the purposes of the instant Motion, references in the supporting exhibits to "American Motorists Insurance Company" may be considered references to Kemper. For the Court's ease of reference, wherever possible, the instant Motion will make reference only to Kemper, rather than to "American Motorists Insurance Company."

³ Mr. Mensie was the witness designated by Kemper in the instant lawsuit for the purposes of its Fed. R. Civ. P. 30(b)(6) deposition.

through Plaintiff's lawyers' broker, Dean Witter, Inc. ("Dean Witter").⁴ See Latti Dep. at 71:2-11; Mensie Dep. at ex. 6.⁵

On or about April 19, 1983, Plaintiff signed a "General Release" memorializing the terms of the settlement and the payments due to Plaintiff, specifically, a lump sum payment of \$250,000, and \$1,450 per month for life, with a 3 % increase compounded annually, and 20 years certain. See Mensie Dep. at 220:13-221-9, and at ex. 10. The "General "Release" provided that the monthly payments would be paid from a "fully paid annuity contract for [Plaintiff's] benefit with Charter [Security] Life[.]" See Mensie Dep. at ex. 10. Plaintiff's lawyers prepared a "settlement sheet" detailing the total amount of the cash payment that Plaintiff would receive following deductions for fees and costs, and also noting that the cost of the annuity was \$175,000. See Latti Dep. at ex. 1.

On or about April 22, 1983, in order to ensure that Plaintiff had a full understanding of the terms of this settlement, the court in the Underlying Action appointed one Leonard DeCof ("Mr. Decof") as guardian ad litem for Plaintiff. See Guardian Hrg. at 1:15-18, 2:24-25, 3:3-5. On May 3, 1983, Mr. DeCof appeared before the court in the Underlying Action in order to testify as to the background and terms of the settlement. Id. at 1:1, 1:6-7, 1:15-2:12, 6:19-23, 7:21-8:25, 13:16-18, 14:2-15:9, 16:19-23. Mr. Decof testified that the settlement provided, at the insistence of Plaintiff's lawyers, that the defendants would pay Plaintiff's lawyers the sum of

⁴ Charter Security Life is now known as Metropolitan Life Insurance Company ("Metropolitan Life"), which has been named as a defendant in this lawsuit. Dean Witter is now known as Morgan Stanley, DW, Inc. ("Morgan Stanley"), which also has been named as a defendant in this lawsuit.

⁵ Specifically, on April 8, 1983, Charter Security Life had prepared a proposal of a "life annuity 20 year certain" that provided for "\$1,450.45 per month for the first year [to] increase 3% per year[.]" See Latti Dep. at ex. 3, p. 3.

\$175,000 so that Plaintiff's lawyers could purchase an annuity of their choice. Id. at 7:11-8:20. The court approved the settlement. Id. at 21:9-16.

B. The Purchase And Issuance Of The Annuity.

On or about May 4, 1983, an annuity application from Charter Security Life was signed by Kemper. See Mensie Dep. at ex. 2. The annuity application required an annuity premium in the amount of \$175,000. See Mensie Dep. at ex. 2. As payment for the annuity premium and in settlement of the Underlying Action, Kemper issued check number 250-0-008-585, made payable to Charter Security Life in the amount of \$175,000 (the "Settlement Check"), and Kemper's counsel delivered the Settlement Check to Plaintiff's lawyer. See the Settlement Check (attached hereto as Exhibit E); Correspondence to Kemper dated May 3, 1983 ("May 3, 1983 Correspondence") (attached hereto as Exhibit F).

On or about June 17, 1983, Charter Security Life signed and issued a single premium deferred annuity contract (the "Annuity"). See Mensie Dep. at ex. 11. The Annuity provides that the "Single Premium payment for this contract was paid in advance." Id. at ex. 11, p. 5. As the annuity issuer, Charter Security Life became obligated to make the Annuity payments to Plaintiff (i.e., the annuitant). Id. at ex. 11, pp. 1, 5. The Annuity provides that it is a "Lifetime Annuity" and that "[Charter Security Life] will pay a lifetime monthly income to the Annuitant if living on the Annuity Date." Id. at ex. 11, p. 1. The Annuity also included a "Supplementary Agreement" further specifying that Plaintiff would receive monthly payments of "\$1,450.45 each, increasing 3% annually, commencing June 6, 1983, for a period of 240 months certain and life thereafter." Id. at ex. 11.

C. Charter Security's Subsequent Attempt To Change The Terms Of The Annuity.

On July 14, 1983 - approximately one month after Charter Security Life issued the Annuity and began making payments to Plaintiff in accordance therewith – Barbara Boehm of Charter Security Life sent correspondence to Kurt Snyder of Dean Witter, claiming that “due to a clerical error the option indicated on the above supplementary contract for [Plaintiff] was incorrectly typed as 240 months certain and life thereafter instead of 240 months only. Enclosed is a new contract....” See Deposition Transcript of Barbara Fasman (“Fasman Dep.”) at ex. 3 (attached hereto as Exhibit G).⁶ Mr. Snyder forwarded a copy of this correspondence to John Noe of Kemper, and on August 12, 1983, by correspondence to Robert Foley of Dean Witter, Mr. Noe responded to Charter Security Life’s attempt to change the terms of the Annuity, as follows:

“I received the replacement policy issued by Charter Security Life Insurance (New York) changing the terms of the annuity from 240 months certain and life thereafter to 240 months certain only.

I am advised by Mr. Hughes of Lattie [sic] Associates that your quotation was to provide an annuity which would pay \$1,450.45 per month for the first year increasing annually at a rate of 3% compounded annually for 240 months certain and life thereafter for a single premium of \$175,000.00. This was the benefit to be provided under the terms of a general release and settlement agreement approved by Judge Pettine of the United States District Court for the District of Rhode Island.

The agreed upon premium was paid and a policy issued which is now in the files of the contract owner, [Kemper], providing benefits required by the release, settlement agreement and court order. I consider the original annuity contract valid and enforceable and will retain it in our files....

⁶ Ms. Fasman was the witness designated by Metropolitan Life in the instant lawsuit for the purposes of its Fed. R. Civ. P. 30(b)(6) deposition.

See Fasman Dep. at ex. 4. Mr. Noe sent copies of this correspondence to Plaintiff's lawyer, Mr. Hughes, and to Ms. Boehm at Charter Security Life. Id.

On September 26, 1983, Robert Ligouri of Charter Security Life sent correspondence to Mr. Noe, claiming that the Annuity was "incorrectly typed" for "240 month certain and life thereafter...instead of 240 months only", and that "the original supplementary contract" was "null and void." See Fasman Dep. at ex. 5. Plaintiff's lawyer, Mr. Hughes, was sent a copy of this correspondence as well (as was Mr. Foley of Dean Witter). Id. On October 10, 1983, Mr. Noe replied to Mr. Ligouri, and again refused to change the terms of the Annuity. See Fasman Dep. at ex. 6. Specifically, Mr. Noe advised that Kemper "intend[s] to retain the original policy in [its] files and consider[s] it to be valid and enforceable." Id. Mr. Noe also sent a copy of this correspondence to Plaintiff's lawyer, Mr. Hughes (as well as to Mr. Foley). Id.

On October 14, 1983, Ms. Boehm sent correspondence to Mr. Noe enclosing a "corrected" supplementary agreement to "reflect monthly payments for a period of 240 months only." See Fasman Dep. at Ex. 8.⁷ By reply correspondence, Mr. Noe again refused to change the terms of the Annuity, and stated as follows:

"In response to your October 14, 1983 I reject and return herewith the Supplementary Agreement and General Provisions attached thereto. The original annuity policy will be retained in the files of [Kemper] and considered valid and enforceable."

See Fasman Dep. ex. at 7. Kemper also sent a copy of this correspondence to Plaintiff's lawyer, Mr. Hughes (as well as to Mr. Foley). Id.

In 1983, Plaintiff himself had no contact whatsoever with Kemper. See Deposition Transcript of Dennis J. Dimon ("Dimon Dep.") at 117:20-118:11 (attached hereto as Exhibit H).

⁷ It is noted that Charter Security Life did not attempt to return any premium to Plaintiff's lawyers, Kemper, or any other party.

Of the parties to the instant lawsuit, the only parties with which Plaintiff had any contact in 1983 were Plaintiff's lawyers. Id.⁸

After making the Annuity payment due on May 5, 2003, Metropolitan Life stopped making the Annuity payments to Plaintiff. See Fasman Dep. at ex. 20.

D. Plaintiff Files The Instant Lawsuit.

On May 23, 2005, Plaintiff filed the instant lawsuit, naming as defendants Mr. Latti, Latti Associates, Latti & Anderson LLP,⁹ Metropolitan Life, Morgan Stanley, and Kemper. See Compl.¹⁰ Of the thirteen counts in the Complaint, only two counts are directed against Kemper. Those counts purport to assert causes of action for breach of contract (Count Twelve) and negligent misrepresentation (Count Thirteen). Id. With respect to the purported claim for breach of contract, the Complaint alleges that "[Kemper] was to provide a lifetime annuity guaranteed for twenty (20) years... but breached this contract by altering the terms of the agreement after the contract was signed and approved by the court and for failing to perform the contract." Id. at ¶¶ 72, 73. With respect to the purported claim for negligent misrepresentation, the Complaint alleges that "[Kemper] negligently misrepresented the terms of contract, stating that the contract was for life, guaranteed for twenty years," and that Plaintiff "relied on the representation of counsel and [Kemper] as manifested in the original contract approved by the court and suffered financial losses as a result of [Kemper's] negligent misrepresentation in altering the contract." Id. at ¶¶ 77, 78.

⁸ It is noted that, in September 1999, Plaintiff's wife had inquired with Metropolitan Life (Charter Security Life's successor) as to the terms of the Annuity. Id. at ex. 11. On September 24, 1999, Metropolitan Life sent correspondence to Plaintiff stating that "[y]ou receive monthly payments until 5/5/2003." Id.

⁹ Latti & Anderson LLP is the successor law firm to Latti Associates.

¹⁰ Kemper did not receive any communications from Plaintiff, Plaintiff's lawyers, Metropolitan Life, or any other person or entity, relating to the Annuity, from October 1983 until the filing of this lawsuit on May 23, 2005.

On November 22, 2006, Plaintiff proffered an expert report in this matter which purports to allocate liability among the defendants. See Plaintiff's proffered Expert Report ("Plaintiff's Expert Report") (attached hereto as Exhibit I). Plaintiff's Expert Report does not assert that Kemper breached any contract or made any negligent misrepresentation; indeed, Plaintiff's Expert Report does not reference Kemper at all. See id.¹¹

III. LEGAL ARGUMENT

A. Legal Standard.

Summary judgment is appropriate when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Barbour v. Dynamics Research Corp., 63 F.3d 32, 36-37 (1st Cir. 1995) (quoting Fed. R. Civ. P. 56(c)). The movant has the initial burden of either offering evidence to disprove an element of the plaintiff's case or by demonstrating "an absence of evidence to support the nonmoving party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986).

After the movant has met this burden, the nonmovant must "go beyond the pleadings and by [its] own affidavits, or by the depositions, answer to interrogatories, and admissions on file, designate specific facts showing that there is some genuine issue for trial." Celtox, 477 U.S. at 324. The nonmovant cannot rely upon mere allegations, but must "adduce specific, provable facts demonstrating that there is a triable issue." Rogers v. Fair, 902 F.2d 140, 143 (1st Cir. 1990) (quoting Brennan v. Hendrigan, 888 F.2d 189, 191 (1st Cir. 1989)). There must be "sufficient evidence" favoring the nonmoving party for a jury to find in its favor. Id. "If the

¹¹ It is noted that Plaintiff's Expert Report asserts that the alleged breach of the Annuity occurred in 1983. Id. at p. 7.

evidence is merely colorable or not significantly probative, summary judgment may be granted.” *Id.* (quoting Anderson v. Liberty Lobby, 477 U.S. 242, 249-50 (1986)). And where, as here, the plaintiff would bear the burden of proof at trial, summary judgment for the defendant is appropriate when the plaintiff cannot establish the existence of an element essential to its case. Cleveland v. Policy Mgmt. Sys. Corp., 526 U.S. 795, 805-06 (1999).

B. Choice Of Law.

In determining which state’s laws applies, the question is resolved by using the choice of law analysis of the forum state. The Travelers Indem. Co. of Illinois v. Wolverine Corp., No. 03-10164, 2005 U.S. Dist. LEXIS 31651, at *2 (D. Mass. Dec. 8, 2005) (citing Reicher v. Berkshire Life Ins. Co. of Am., 360 F.3d 1, 4 (1st Cir. 2004)). Absent a contractual choice of law provision, “Massachusetts’ choice-of-law framework requires consideration of several factors in order to determine the appropriate forum state.” *Id.* (citing Reicher, 360 F.3d at 4-6).

The first step in a choice of law analysis is to determine whether an actual conflict actually exists between the laws of the interested jurisdictions. Reicher, 360 F.3d at 4 (citing Millipore Corp. v. Travelers Indem. Co., 115 F.3d 21, 29 (1st Cir. 1997)). Assuming a conflict, Massachusetts courts consider a “variety of factors” in order to determine which state has a more “significant relationship” to the case. The Travelers Indemnity Co., 2005 U.S. Dist. LEXIS 31651, at * 4 (citing Reicher, F.3d at 5). The Massachusetts Supreme Court has stated that it “feels free...to borrow from any of the various lists to help focus...attention on the considerations particularly relevant to the case.” Reicher, 360 F.3d at 5 (citations omitted).

In this case, Metropolitan Life – the issuer of the subject Annuity, and as such, the entity that was responsible for making the subject Annuity payments – is located in New York. It is

therefore submitted that New York has the most significant relationship to the case, and that New York law governs this action.¹²

C. Plaintiff's Claims Against Kemper Are Time-Barred.

Plaintiff's claims against Kemper are plainly barred by the applicable statutes of limitations.

1. Plaintiff's Claim Against Kemper For Breach of Contract Is Time-Barred.

Under New York law, the statute of limitations for a breach of contract claim is six years from the date of breach. See N.Y. C.P.L.R. 213(2) (2006); see also Sitkiewicz v. County of Sullivan, 681 N.Y.S.2d 677, 678 (N.Y. App. Div. 1998) (citations omitted). The statute of limitations begins to run at the time of the breach, even if damages do not occur until later. Ely-Cruikshank Co., Inc. v. Bank of Montreal, 615 N.E.2d 985, 986 (N.Y. Ct. App. 1993) (citations omitted).

The last time that Kemper had any involvement with Plaintiff's lawyers, or any other person or entity, relating to the Underlying Action or the Annuity was in October 1983. Therefore, even assuming – all facts and law to the contrary – that Kemper breached a contract with Plaintiff, any such breach necessarily could have occurred no later than October 1983.¹³ See St. George Hotel Assocs. v. Shurkin, 786 N.Y.S.2d 56 (N.Y. App. Div. 2004) (ruling that

¹² In addition to New York law, Kemper also will apply in this Memorandum of Law the relevant provisions of Massachusetts law. It is further noted that, under the law of any potentially relevant jurisdiction, Kemper would be entitled to summary judgment.

¹³ As noted above, Plaintiff's own Expert Report asserts that the alleged breach of the Annuity occurred in 1983. See Plaintiff's Expert Report at p. 7.

breach of contract action accrued at time of insurance policy's procurement and issuance not when damages allegedly occurred and was therefore barred by statute of limitations).¹⁴

Because Plaintiff commenced this action on May 23, 2005 – approximately twenty-two years after the alleged breach – Plaintiff's breach of contract claim is clearly barred by New York's six-year statute of limitations. N.Y. C.P.L.R. 213(2) (2006).¹⁵

2. Plaintiff's Claim Against Kemper For Negligent Misrepresentation Is Time-Barred.

Under New York law, the statute of limitations for a negligent misrepresentation claim is six years from the date of accrual. See N.Y. C.P.L.R. 213(1) (2006); see also Fandy Corp. v. Lung-Fong Chen, 691 N.Y.S.2d 572, 572-73 (N.Y. App. Div. 1999) (citations omitted). A cause of action for negligent misrepresentation accrues "on the date of the alleged misrepresentation which is relied upon by the plaintiff." Id. at 573 (citations omitted).

As explained above, the last time that Kemper had any involvement with Plaintiff's lawyers, or any other person or entity, relating to the Underlying Action or the Annuity was in October 1983. Therefore, even assuming – all facts and law to the contrary – that Kemper had made a negligent misrepresentation to Plaintiff, any such misrepresentation necessarily could

¹⁴ "Knowledge of the occurrence of the wrong on the part of the plaintiff is not necessary to start the Statute of Limitations running in [a] contract [action]." Ely-Cruikshank, 615 N.E.2d at 987 (citations omitted). Nevertheless, it is noted that Plaintiff was aware, in 1983, of Charter Security Life's unilateral attempt to change the terms of the Annuity, by virtue of no less than four (4) letters sent to Plaintiff's lawyer regarding said attempt between August and October 1983. As Plaintiff's agent, Plaintiff's lawyer's knowledge is imputed to Plaintiff. Veal v. Geraci, 23 F.3d 722, 725 (2nd Cir. 1994) (applying New York law, court concludes that attorney's knowledge of conduct giving rise to claim was imputed to client). It is noted that under Massachusetts law as well, a client is charged with the knowledge of his attorney. Levin v. Berley, 728 F.2d 551 (1st Cir. 1984) (citations omitted) (applying Massachusetts law, court notes that knowledge of attorney is imputed to client for purposes of statute of limitations considerations).

¹⁵ Similarly, under Massachusetts law, the statute of limitations for a breach of contract claim is six years. Mass. Gen. Laws ch. 260, § 2 (2006); see also Patsos v. First Albany Corporation, 741 N.E.2d 841, 846 (Mass. 2001) (discussing statutes of limitations on various actions, including breach of contract). Therefore, assuming Massachusetts law governed this action, Plaintiff's breach of contract claim still would be barred by the applicable statute of limitations, for the reasons set forth above.

have been made no later than October 1983. See Espie v. Murphy, No. 2005-07034, 2006 N.Y. App. Div. LEXIS 14544 (N.Y. App. Div. Dec. 5, 2006) (ruling that plaintiffs' cause of action for negligent misrepresentation began to run on date of closing agreement when misrepresentations from which fraud could have been inferred were made to plaintiffs).

Because Plaintiff commenced this action on May 23, 2005 - nearly twenty-two years after the alleged misrepresentation – Plaintiff's claim for negligent misrepresentation is clearly barred by New York's six-year statute of limitations. See N.Y. C.P.L.R. 213(1) (2006).¹⁶

D. Plaintiff Cannot Establish The Requisite Elements Of His Claims Against Kemper.

In addition, Kemper is entitled to summary judgment on the separate and independent grounds that Plaintiff cannot establish the substantive elements of his claims for breach of contract and negligent misrepresentation.

1. Plaintiff Cannot Establish The Requisite Elements Of A Claim Against Kemper For Breach Of Contract.

Under New York law, the essential elements of breach of contract claim are as follows: "(1) the formation of an agreement by an offer, acceptance, and consideration; (2) performance by one party; (3) breach of the agreement by the other party; and (4) damages." Constructive Hands, Inc. v. Baker, 446 F. Supp. 2d 88, 93 (N.D.N.Y. 2006) (citations omitted).

In support of his breach of contract claims, Plaintiff alleges that "[Kemper] was to provide a lifetime annuity guaranteed for twenty (20) years... but breached this contract by altering the terms of the agreement after the contract was signed and approved by the court and

¹⁶ Under Massachusetts law, the statute of limitations for a negligent misrepresentation claim is three years. Mass. Gen. Laws. ch. 260, § 2A (2006). Therefore, assuming Massachusetts law governed this action, Plaintiff's negligent misrepresentation claim still would be barred by the applicable statute of limitations, for the reasons set forth above.

for failing to perform the contract.” See Compl. at ¶¶ 72, 73. Plaintiff has adduced no evidence to support these allegations. Indeed, the evidence demonstrates that nothing could be further from the truth: Kemper complied with all of its obligations in connection with the settlement of the Underlying Action, and, in fact, refused to alter the terms of the Annuity when Charter Security Life subsequently attempted to do so. Specifically, the evidence demonstrates as follows:

- Plaintiff’s lawyers (or their broker) secured from Charter Security Life a \$175,000 premium quote for an annuity that would provide monthly payments in the amount of \$1,450.45 each, increasing 3% annually, for a period of 20 years certain and life thereafter. See Latti Dep. 71:2-11; Mensie Dep. at ex. 6. Plaintiff’s lawyers requested that Kemper pay them a lump sum in the amount of \$175,000 so that Plaintiff’s lawyers could obtain this annuity. See Guardian Hrg. at 7:11-8:20; Mensie Dep. at ex. 5.
- Kemper completed Charter Security Life’s annuity application, issued the Settlement Check in the amount of the \$175,000 annuity premium, and delivered same to Plaintiff’s lawyer, in fulfillment of Kemper’s settlement obligations. See Mensie Dep. at ex. 2; Settlement Check; May 3, 1983 Correspondence.
- Charter Security Life issued the lifetime Annuity, which specified that Plaintiff would receive monthly payments of \$1,450.45 each, increasing 3% annually, commencing June 6, 1983, for a period of 20 years certain and life thereafter. See Mensie Dep. at ex. 11.
- Metropolitan Life subsequently attempted to unilaterally change the terms of the Annuity, but Kemper refused to agree to this. See Fasman Dep. at ex. 3, 4, 5, 6, 7 and 8.
- Kemper further took the affirmative step of advising Plaintiff’s lawyers of Charter Security Life’s attempt to change the terms of the Annuity. See Fasman Dep. at ex. 4, 6, and 7.

In light of these facts, it is beyond cavil that Plaintiff’s claim against Kemper for breach of contract is simply unsupportable.¹⁷

¹⁷ Similarly, under Massachusetts law, Plaintiff must establish the following elements in order to recover on a breach of contract claim: “(1) an agreement was made between the plaintiffs and the defendant supported by valid consideration; (2) the plaintiffs have been ready, willing, and able to perform; (3) the defendant’s breach has prevented them from performing; and (4) the plaintiffs have suffered damage. Singarella v. Boston, 173 N.E.2d 290, 291 (Mass. 1961) (citations omitted); see also Doyle v. Hasbro, Inc., 103 F.3d 186, 194-195 (1st Cir. 1996).

(continued...)

2. Plaintiff Cannot Establish The Requisite Elements Of A Claim Against Kemper For Negligent Misrepresentation.

The elements of negligent misrepresentation under New York law are as follows: “(1) the defendant had a duty, as a result of a special relationship, to give correct information; (2) the defendant made a false representation that he or she should have known was incorrect; (3) the information supplied in the representation was known by the defendant to be desired by the plaintiff for a serious purpose; (4) the plaintiff intended to rely and act upon it; and (5) the plaintiff reasonably relied on it to his or her detriment.” Hydro Investors, Inc. v. Trafalgar Power, Inc., 227 F.3d 8, 20 (2d Cir. 2000) (citations omitted). The alleged misrepresentation must be factual in nature and not promissory or relating to events in the future that may not come to a realization. Id. at 20-21.

In support of his negligent misrepresentation claim, Plaintiff alleges that “[Kemper] negligently misrepresented the terms of contract, stating that the contract was for life, guaranteed for twenty years,” and that Plaintiff “relied on the representation of counsel and [Kemper] as manifested in the original contract approved by the court and suffered financial losses as a result of [Kemper’s] negligent misrepresentation in altering the contract.” See Compl. at ¶¶ 77, 78. Plaintiff has adduced no evidence to support these allegations. Indeed, the evidence demonstrates that Plaintiff cannot support a claim against Kemper for negligent misrepresentation for at least three separate and independent reasons:

- First, Plaintiff has failed to establish that Kemper made any representation to Plaintiff regarding the Annuity terms. Indeed, quite to the contrary, the evidence shows that it was Plaintiff’s own lawyers who determined that \$175,000 would purchase a lifetime annuity on the desired terms. See Mensie Dep. at ex. 5 and 6. To that end, Plaintiff’s lawyers

(..continued)

Therefore, assuming Massachusetts law governed this action, Plaintiff’s breach of contract claim still would fail as a matter of law, for the reasons set forth above.

demanded that Kemper provide a Settlement Check in the amount of the \$175,000 Annuity premium, and Kemper did so. See Guardian Hrg. at 7:11-8:20; Mensie Dep. at ex. 5,6; Settlement Check, May 3, 1983 Correspondence.

- Second, even assuming (contrary to fact) that Kemper made a representation to Plaintiff regarding the Annuity terms, Plaintiff has not shown and cannot show that he relied upon such representation. Indeed, Plaintiff has testified that he had no contact whatsoever with Kemper, and that he was relying on the advice of his lawyers. See Dimon Dep. at 117:20-118:11.
- Third, even assuming (contrary to fact) that Kemper made a representation to Plaintiff regarding the Annuity terms, and that Plaintiff relied upon such representation, Plaintiff has not shown and cannot show that any such representation was false. To the contrary, it always has been and remains Kemper's position that the Annuity is clearly payable for life. Neither Charter Security Life's subsequent attempt to unilaterally alter the terms of the Annuity (to which attempt Kemper refused to agree), nor Metropolitan's Life cessation of Annuity payments in May 2003, can possibly operate to render "false" any previous representation by Kemper that the Annuity is payable for life.

Because Plaintiff cannot establish any of the elements of a claim against Kemper for negligent misrepresentation, Plaintiff's claim should be dismissed.¹⁸

IV. CONCLUSION

For the foregoing reasons, Kemper respectfully requests that this Court enter summary judgment in its favor.

Respectfully submitted,

KEMPER INSURANCE COMPANY

by its, attorneys,

/s/ Kevin L. Golden
DRINKER BIDDLE & REATH LLP

¹⁸ Similarly, in order to recover for negligent misrepresentation under Massachusetts law, a "plaintiff must prove that the defendant (1) in the course of his business, (2) supplied false information for the guidance of others (3) in their business transactions, (4) causing and resulting in pecuniary loss to those others (5) by their justifiable reliance upon the information, and (6) with failure to exercise reasonable care or competence in obtaining or communicating the information." Sampson v. MacDougall, 802 N.E.2d 602, 608 (Mass. Ct. App. 2004) (quoting Nota Const. Corp. v. Keyes Assocs., Inc., 694 N.E.2d 401, 405 (Mass. Ct. App. 1998)). Therefore, assuming Massachusetts law governed this action, Plaintiff's breach of contract claim still would fail as a matter of law, for the reasons set forth above.

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Dated: January 2, 2007

Certification Pursuant To Local Rules 7.1 and 37.1

The above-signed certifies that the parties have conferred in good faith in attempts to resolve the issues raised herein but were unable to do so. Specifically, the parties conferred by correspondence dated December 21, 2006, and December 28, 2006, between Timothy J. O'Driscoll and Brian Keane.

Certification of Service

I hereby certify that a true and accurate copy of the foregoing document was filed via the ECF system and will be served electronically through that system upon Counsel of Record on January 2, 2007.

/s/ Kevin L. Golden
Kevin L. Golden

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.

DENNIS DIMON,
Plaintiff

05 - 11073 REK

vs.

COMPLAINT

MICHAEL B. LATTI, LATTI
ASSOCIATES, LATTI & ANDERSON
LLP, METROPOLITAN LIFE
INSURANCE COMPANY, KEMPER
INSURANCE COMPANY, and
MORGAN STANLEY DW, INC.,
Defendants

MAGISTRATE JUDGE T. L. M.

AMOUNT \$ N/A
SUMMONS ISSUED YES
LOCAL RULE 4.1 1
WAIVER FORM 1
MCF ISSUED 6/23/05

INTRODUCTION

1. This is a contract and malpractice action for monetary relief resulting from the premature cancellation of the plaintiff's structured settlement payments, which occurred on or about May 5, 2003 when the defendants ceased paying the settlement due the plaintiff as a result of a personal injury action in 1983. The plaintiff released the defendant shipowner in his personal injury action in consideration of a life annuity guaranteed for 20 years which the court approved. The plaintiff asserts a cause of action against the defendants based upon their breach of the settlement contract and for the breach of fiduciary duties by his former attorney.

JURISDICTION

2. Jurisdiction is proper pursuant to 28 U.S.C., sec. 1332(a). Venue is proper in the

District Court of Massachusetts pursuant to 28 U.S.C., sec. 1391(c).

PARTIES

3. The plaintiff, Dennis Dimon, is of legal age and resides in West Kingston, Rhode Island.
4. The defendant, Michael B. Latti, is now a resident of the State of Maine and a lawyer licensed to practice law in the Commonwealth of Massachusetts who formerly resided in and practiced law in the Commonwealth of Massachusetts in 1983.
5. The defendant, Latti Associates, was a law firm created under the laws of the Commonwealth of Massachusetts by Michael B. Latti, with a principal place of business at 30-31 Union Wharf, Boston, Massachusetts.
6. The defendant, Latti & Anderson, LLP, is a law firm created under the laws of the Commonwealth of Massachusetts, with a principal place of business at 30-31 Union Wharf, Boston, Massachusetts and is the successor in interest to Latti Associates.
7. The defendant, Metropolitan Life Insurance Company is an insurance company with a principal place of business in New York, New York, and regularly conducts business in the Commonwealth of Massachusetts.
8. The defendant, Kemper Insurance Company is an insurance company with a principal place of business in Long Grove, Illinois, which regularly conducts business in the Commonwealth of Massachusetts.
9. The defendant, Morgan Stanley, is a brokerage company with a principal place of business in New York, New York, and regularly conducts business in the Commonwealth of Massachusetts.

FACTUAL ALLEGATIONS

10. In 1981, the plaintiff was severely injured while serving as a member of the crew aboard the F/V/ JENNY C, resulting in the loss of his eye.
11. On or about February 4, 1983, following a trial, a jury awarded the plaintiff \$710,000 for his injuries against the defendant, Jenny C., Inc.
12. The plaintiff was represented at all times for the trial and subsequent settlement by Latti Associates, operated under the authority of Michael B. Latti.
13. Latti & Anderson, LLP is the successor in interest to Latti Associates.
14. Following the verdict, the parties entered into a settlement agreement, approved by the United States District Court for the District of Rhode Island and a *guardian ad litem* appointed by the court, providing the plaintiff with a lump sum payment of \$250,000 and an annuity for the life of the plaintiff and guaranteed for twenty (20) years which would continue for the life of the plaintiff. The annuity would pay the plaintiff a set amount (beginning at \$1,450.45) each month with the amount increasing by three (3) percent each year.
15. Prior to the settlement the court appointed Leonard Decof, Esquire as *guardian ad litem* to review the settlement and to report to the court.
16. The *guardian ad litem* was appointed by the court due to the plaintiff's inability to read or understand the settlement contract and was an extra measure by the court to protect the plaintiff even though he had separate counsel through Latti Associates.
17. American Motorists Insurance Company (now Kemper Insurance Company) applied for the annuity.

18. Dean Witter, Inc.(now Morgan Stanley), acting as the agent and broker for American Motorists Insurance Company, arranged for the lifetime annuity.
19. The defendant Metropolitan Life Insurance Company (formerly Charter Security Insurance Company), provided the annuity beginning June 5, 1983.
20. On or about June 14, 1983, Charter Security Life Insurance (now Metropolitan Life Insurance Company) informed Dean Witter, Inc. (now Morgan Stanley) that a clerical error had been made on the annuity contract and that the contract should have read for 240 months (20 years) rather than for life with a guarantee of twenty (20) years.
21. On or about September 26, 1983, Charter Security Life Insurance (now Metropolitan Life Insurance Company) informed American Motorists (now Kemper Insurance) and Latti Associates of the clerical error described in paragraph 20.
22. A supplementary document changing the contract from life, guaranteed for twenty (20) years to twenty (20) years only was forwarded to each of the insurance companies and Latti Associates.
23. The plaintiff was not advised of this change nor was the court or *guardian ad litem* informed of the alleged clerical error upon which the plaintiff, court, and *guardian ad litem* had relied in accepting the settlement agreement.
24. On May 5, 2003, the defendant Metropolitan Life Insurance Company, stopped payment on the plaintiff's settlement, stating that the annuity was only for a fixed period of twenty years rather than for the life of the plaintiff.
25. Upon the suspension of payments, the plaintiff attempted to contact his former lawyer at Latti Associates, now Latti & Anderson, but was informed that no file

existed and that the firm could not help him.

COUNT I

(Dennis Dimon v. Michael B. Latti -
Breach of Fiduciary Duty)

26. Paragraphs 1-25 are realleged and incorporated by reference.
27. A lawyer has a duty to act in the best interest of his client and not to act in any way adverse or contrary to the interests of the client.
28. The plaintiff relied upon the defendant for advice, counsel, and information in order to make an informed decision prior to entering into any settlement agreement whereby the plaintiff would forfeit his rights to future compensation for his injuries.
29. The defendant, in breach of his fiduciary duty, represented to the plaintiff that the annuity was for life with a guarantee of twenty (20) years.
30. Due to the defendant's breach, the plaintiff has suffered financial loss.

REQUEST FOR RELIEF

1. That this Court, under Count I, enter judgment in favor of the plaintiff against the defendant for breach of fiduciary duty.
2. For such other relief as this Court deems appropriate.

COUNT II

(Dennis Dimon v. Michael B. Latti -
Negligence)

31. Paragraphs 1-30 are realleged and incorporated by reference.
32. A lawyer has a duty to act with reasonable care and to use the skill of a reasonably competent lawyer in representing a client.

33. The defendant failed to act reasonably in not informing the plaintiff of the alleged clerical error changing the terms of the annuity.
34. Due to the actions of the defendant, the plaintiff suffered financial loss.

REQUEST FOR RELIEF

1. That this Court, under Count II, enter judgment in favor of the plaintiff.
2. For such other relief as this Court deems appropriate.

COUNT III

(Dennis Dimon v. Michael B. Latti -
Breach of Contract)

35. Paragraphs I-34 are realleged and incorporated by reference.
36. The plaintiff and the defendant entered into a contract for the defendant to provide legal representation for injuries suffered by the plaintiff in a fishing boat accident.
37. The defendant breached this contract by failing to provide competent legal representation, in failing to inform the plaintiff of an alleged clerical error changing the plaintiff's settlement agreement, and failing to ensure that the plaintiff understood the alleged changes to the settlement agreement.
38. The plaintiff suffered financial losses as a result of the defendant's breach of contract.

REQUEST FOR RELIEF

1. That this Court, under Count III, enter judgment in favor of the plaintiff against the defendant for breach of contract.
2. For such other relief as this Court deems appropriate.

COUNT IV

(Dennis Dimon v. Latti Associates-
Breach of Fiduciary Duty)

39. Paragraphs 1-38 are realleged and incorporated by reference.
40. A lawyer has a duty to act in the best interest of his client and not to act in any way adverse or contrary to the interests of the client.
41. The plaintiff relied upon the defendant law firm for advice, counsel, and information in order to make an informed decision prior to entering into any settlement agreement whereby the plaintiff would forfeit his rights to future compensation for his injuries.
42. Due to the defendant's breach, the plaintiff has suffered financial loss.

REQUEST FOR RELIEF

1. That this Court, under Count IV, enter judgment in favor of the plaintiff against the defendant for breach of fiduciary duty.
2. For such other relief as this Court deems appropriate.

COUNT V

(Dennis Dimon v. Latti Associates -
Negligence)

43. Paragraphs 1-42 are realleged and incorporated by reference.
44. A lawyer has a duty to act with reasonable care and to use the skill of a reasonably competent lawyer in representing a client.
45. The defendant failed to act reasonably in not informing the plaintiff and ensuring that the plaintiff understood the changes to the settlement agreement.
46. Due to the actions of the defendant, the plaintiff suffered financial loss.

REQUEST FOR RELIEF

1. That this Court, under Count V, enter judgment in favor of the plaintiff.
2. For such other relief as this Court deems appropriate.

COUNT VI

(Dennis Dimon v. Latti Associates -
Breach of Contract)

47. Paragraphs 1-46 are realleged and incorporated by reference.
48. The plaintiff and the defendant entered into a contract for whereby the defendant was to provide legal representation for injuries suffered by the plaintiff in a fishing accident.
49. The defendant breached this contract by failing to provide competent legal representation, failing to inform the plaintiff of changes to the plaintiff's settlement agreement, and failing to ensure that the plaintiff understood the changes to the settlement agreement.
50. The plaintiff suffered financial losses as a result of the defendant's breach of contract.

REQUEST FOR RELIEF

1. That this Court, under Count VI, enter judgment in favor of the plaintiff against the defendant for breach of contract.
2. For such other relief as this Court deems appropriate.

COUNT VII

(Dennis Dimon v. Latti & Anderson LLP -
Breach of Fiduciary Duty)

51. Paragraphs 1-50 are realleged and incorporated by reference.

52. A lawyer has a duty to act in the best interest of his client and not to act in any way adverse or contrary to the interests of the client.
53. The plaintiff relied upon the defendant for advice, counsel, and information in order to make an informed decision prior to entering into any settlement agreement whereby the plaintiff would forfeit his rights to future compensation for his injuries.
54. Due to the defendant's breach, the plaintiff has suffered financial loss.

REQUEST FOR RELIEF

1. That this Court, under Count VII, enter judgment in favor of the plaintiff against the defendant for breach of fiduciary duty
2. For such other relief as this Court deems appropriate.

COUNT VIII

(Dennis Dimon v. Latti & Anderson LLP -
Negligence)

55. Paragraphs 1-54 are realleged and incorporated by reference.
56. A lawyer has a duty to act with reasonable care and to use the skill of a reasonably competent lawyer in representing a client.
57. The defendant failed to act reasonably in not informing the plaintiff and ensuring that the plaintiff understood the changes to the settlement agreement.
58. Due to the actions of the defendant, the plaintiff suffered financial loss.

REQUEST FOR RELIEF

1. That this Court, under Count VII, enter judgment in favor of the plaintiff.
2. For such other relief as this Court deems appropriate.

COUNT IX

(Dennis Dimon v. Latti & Anderson LLP -
Breach of Contract)

59. Paragraphs 1-58 are realleged and incorporated by reference.
60. The plaintiff and the defendant entered into a contract for whereby the defendant was to provide legal representation for injuries suffered by the plaintiff in a fishing accident.
61. The defendant breached this contract by failing to provide competent legal representation, failing to inform the plaintiff of changes to the plaintiff's settlement agreement, and failing to ensure that the plaintiff understood the changes to the settlement agreement.
62. The plaintiff suffered financial losses as a result of the defendant's breach of contract.

REQUEST FOR RELIEF

1. That this Court, under Count IX, enter judgment in favor of the plaintiff against the defendant for breach of contract.
2. For such other relief as this Court deems appropriate.

COUNT X

(Dennis Dimon v. Metropolitan Life Insurance Company -
Breach of Contract)

63. Paragraphs 1-62 are realleged and incorporated by reference.
64. The plaintiff and the defendant entered into a contract whereby the defendant was to provide a lifetime annuity guaranteed for twenty (20) years in exchange for the plaintiff releasing all claims for injuries suffered by the plaintiff in a fishing accident.
65. The defendant breached this contract by altering the agreement after the contract was

signed and approved by the court and for failing to perform the contract.

66. The plaintiff suffered financial losses as a result of the defendant's breach of contract.

REQUEST FOR RELIEF

1. That this Court, under Count X, enter judgment in favor of the plaintiff against the defendant for breach of contract.
2. For such other relief as this Court deems appropriate.

COUNT XI

(Dennis Dimon v. Metropolitan Life Insurance Company -
Negligent Misrepresentation)

67. Paragraphs 1-66 are realleged and incorporated by reference.
68. The plaintiff and the defendant entered into a contract whereby the defendant was to provide a lifetime annuity guaranteed for twenty (20) years in exchange for the plaintiff releasing all claims for injuries suffered by the plaintiff in a fishing accident.
69. The defendant negligently misrepresented the terms of the contract, stating that the contract was for life, guaranteed for 20 years.
70. The plaintiff relied on the representation of counsel and this defendant as manifested in the original contract approved by the court and suffered financial losses as a result of the defendant's negligent misrepresentation in altering the contract.

REQUEST FOR RELIEF

1. That this Court, under Count XI, enter judgment in favor of the plaintiff against the defendant.
2. For such other relief as this Court deems appropriate.

COUNT XII

(Dennis Dimon v. Kemper Insurance Company -
Breach of Contract)

71. Paragraphs 1-70 are realleged and incorporated by reference.
72. The plaintiff and the defendant entered into a contract whereby the defendant was to provide a lifetime annuity guaranteed for twenty (20) years in exchange for the plaintiff releasing all claims for injuries suffered by the plaintiff in a fishing accident.
73. The defendant breached this contract by altering the agreement after the contract was signed and approved by the court and for failing to perform the contract.
74. The plaintiff suffered financial losses as a result of the defendant's breach of contract.

REQUEST FOR RELIEF

1. That this Court, under Count XII, enter judgment in favor of the plaintiff against the defendant for breach of contract.
2. For such other relief as this Court deems appropriate.

COUNT XIII

(Dennis Dimon v. Kemper Insurance Company -
Negligent Misrepresentation)

75. Paragraphs 1-74 are realleged and incorporated by reference.
76. The plaintiff and the defendant entered into a contract whereby the defendant was to provide a lifetime annuity guaranteed for twenty (20) years in exchange for the plaintiff releasing all claims for injuries suffered by the plaintiff in a fishing accident.
77. The defendant negligently misrepresented the terms of the contract, stating that the contract was for life, guaranteed for 20 years.
78. The plaintiff relied on the representation of counsel and this defendant as manifested

in the original contract approved by the court and suffered financial losses as a result of the defendant's negligent misrepresentation in altering the contract.

REQUEST FOR RELIEF

1. That this Court, under Count XIII, enter judgment in favor of the plaintiff against the defendant.
2. For such other relief as this Court deems appropriate.

COUNT XIV

(Dennis Dimon v. Morgan Stanley -
Breach of Contract)

79. Paragraphs 1-78 are realleged and incorporated by reference.
80. The plaintiff and the defendant entered into a contract whereby the defendant was to provide a lifetime annuity guaranteed for twenty (20) years in exchange for the plaintiff releasing all claims for injuries suffered by the plaintiff in a fishing accident.
81. The defendant breached this contract by altering the agreement after the contract was signed and approved by the court and for failing to perform the contract.
82. The plaintiff suffered financial losses as a result of the defendant's breach of contract.

REQUEST FOR RELIEF

1. That this Court, under Count XIV, enter judgment in favor of the plaintiff against the defendant for breach of contract.
2. For such other relief as this Court deems appropriate.

COUNT XV

(Dennis Dimon v. Morgan Stanley -
Breach of Fiduciary Duty)

83. Paragraphs 1-81 are realleged and incorporated by reference.
84. A broker has a duty to act in the best interest of his client and not to act in any way adverse or contrary to the interests of the client.
85. The plaintiff relied upon the defendant for advice, counsel, and information in order to make an informed decision prior to entering into any settlement agreement whereby the plaintiff would forfeit his rights to future compensation for his injuries.
86. Due to the defendant's breach, the plaintiff has suffered financial loss.

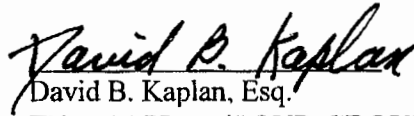
REQUEST FOR RELIEF

1. That this Court, under Count XV, enter judgment in favor of the plaintiff against the defendant for breach of fiduciary duty
2. For such other relief as this Court deems appropriate.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS.

Respectfully submitted
By his attorney

DATED: MAY 20, 2005


David B. Kaplan, Esq.
THE KAPLAN/BOND GROUP
88 Black Falcon Avenue
Suite 301
Boston, MA 02210
(617) 261-0080
BBO #258540

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Dennis Dimon v. Michael B. Gatti
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).
- | | | |
|------|---|--|
| I. | 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT. | |
| II. | 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. | *Also complete AO 120 or AO 121 for patent, trademark or copyright cases |
| III. | 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891. | |
| IV. | 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900. | |
| V. | 150, 152, 153. | |
3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?
- YES ☐ NO ☒
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)
- YES ☐ NO ☒
- IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?
- YES ☐ NO ☒
6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?
- YES ☐ NO ☒
7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? (SEE LOCAL RULE 40.1(D)).
- YES ☐ NO ☒
- A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?
- | | | |
|------------------|------------------|------------------|
| EASTERN DIVISION | CENTRAL DIVISION | WESTERN DIVISION |
|------------------|------------------|------------------|
- B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?
- | | | |
|-------------------------|------------------|------------------|
| <u>EASTERN DIVISION</u> | CENTRAL DIVISION | WESTERN DIVISION |
|-------------------------|------------------|------------------|

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME David B. KaplanADDRESS 88 Black Falcon Avenue, Suite 301, Boston, MA 02110TELEPHONE NO. 617-261-0080

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
Dennis Dimon

(b) County of Residence of First Listed Plaintiff Washington, RI
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

David B. Kaplan
88 Black Falcon Ave, Suite 301, Boston, MA 02110

DEFENDANTS

Michael B. Latti, Latti Associates, Latti & Anderson, LLP, Metropolitan Life Ins., Co., Kemper Ins., Co., and Morgan Stanley, DW, Inc.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 ☒ 4
Citizen of Another State ☒ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 790 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

- (Place an "X" in One Box Only)
☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 1332

Brief description of cause:

Breach of Contract, Breach of Fiduciary Duty, Neg. Misrepresentation

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

5/23/05

SIGNATURE OF ATTORNEY OF RECORD

David B. Kaplan

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

DENNIS J. DIMON)

vs.)

C.A. 81-0063

JENNY C., INC.)

PROCEEDINGS HELD ON MAY 3, 1983 IN THE ABOVE-CAPTIONED CASE
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE
ISLAND BEFORE SENIOR JUDGE RAYMOND J. PETTINE.

APPEARANCES:

ROGER E. HUGHES, JR., ESQUIRE-----FOR THE PLAINTIFF

GUY WELLS, ESQUIRE-----FOR THE DEFENDANT

W. SLATER ALLEN, ESQUIRE

JEROME B. SPUNT, ESQUIRE

MORNING SESSION, MAY 3, 1983

1
2 THE COURT: I realize the plaintiff is not here,
3 but I have such an exacting schedule today, I just got
4 to keep on time, or otherwise, everything's going to fall
5 all along the line. So, I think we better just go ahead.
6 All right, Mr. Decof, would you mind taking the stand
7 and giving a report to the Court please?

8 MR. DECOF: Yes, your Honor.

9 THE COURT: We may have to have this typed.

10 L E O N A R D D E C O F was duly sworn.

11 THE COURT: All right. Would you be kind enough to
12 trace the history of this case, as you understand it,
13 starting with my first contact with you and placing it
14 on the record?

15 MR. DECOF: Yes, your Honor. On April 20, 1983
16 I received a telephone call from Senior Judge Pettine
17 asking me if I would be willing to serve as a guardian
18 ad litem in a case which was somewhat disturbing to him.
19 He told me basically that the case was an admiralty case,
20 a Jones Act case, in which the plaintiff was a seaman who
21 got injured, had lost an eye, that he had received a
22 verdict which totaled more than \$700,000 before a jury,
23 that the parties had agreed to a settlement, and that
24 at a hearing before the Court, the plaintiff responded
25 to questioning from his attorney as to whether or not he

K-0034

understood he would have no more right of action against anyone, if he accepted the settlement, but that when the Court put some questions to him, he failed to understand the questions or failed to reply to them in a way which showed that he understood and more disturbing, informed the Court that he was unable to read. He couldn't read the release, and because he was unable to read, the Court felt that a guardian ad litem should be appointed to report back to the Court as to whether or not this plaintiff was capable of understanding the consequences of the settlement and asked me if I would be willing to undertake this task.

I instructed the Court that I had one matter pending with one of the attorneys involved. I didn't know if it would be a conflict or not, and that I would discuss that with the attorney involved, see if he had any objection. And I did. I discussed it with the attorney involved. He had no objection. He felt there was no conflict. I felt there was no conflict. It was just a matter where we were on opposite sides of the case; and I, therefore, instructed the Court that I would be willing to undertake this task. My understanding was that none of the attorneys had any objection to my appointment as guardian ad litem; and I, therefore, told Judge Pettine that I would undertake this task.

1 Do you want me to continue further, Judge?

2 THE COURT: Yes.

3 MR. DECOF: Following that, on April - I informed
4 the Court on April 22, 1983 that I would undertake -
5 accept the Court's appointment as guardian. On April 25,
6 1983, I held my first conference with the attorneys
7 involved, Roger Hughes, Slater Allen, Guy Wells, and
8 with the plaintiff, Dennis Dimon, his wife, Cathy Dimon,
9 and his mother, Mrs. Louis Dimon.

10 I outlined to all of the parties, all of the
11 attorneys, what I understood my function to be, that my
12 function was to review the file, to review the basic
13 facts of the case, and to assess the posture of the
14 case so that I could inform the plaintiff of all of the
15 ramifications of the settlement and determine that he
16 understood what he was doing, if he agreed to accept the
17 settlement.

18 In order to be able to do this, I instructed all
19 the parties that it was not my function to evaluate the
20 case. It had not yet been heard on the motion for new
21 trial or on the defendant's motion to limit liability
22 under Section 183 of the 46 U.S. Code. But I told all
23 the parties it was not my function to evaluate the case,
24 but I would inform the plaintiff of all of the various
25 options, and I had to know the background of everything

1 that was happening so that I could make sure he was aware
2 of all of the ramifications. I accordingly --

3 THE COURT: What's on your mind, Mr. Allen?

4 MR. ALLEN: Your Honor, may the record now show
5 that the plaintiff is in court?

6 THE COURT: Yes. All right.

7 MR. DECOF: I accordingly did some research on
8 46 U.S. Code 688 and 46 U.S. Code 183. After the first
9 conference that I had, all of the parties understood the
10 position that I was in, and the plaintiff understood.
11 I was careful to inform the plaintiff that the Court
12 wanted me to do this, to make sure that he was protected,
13 and that he understood the nature, the full nature, of
14 everything that he was doing.

15 Subsequent to that, I requested the following
16 documents from the attorneys, and I did receive all
17 these documents, and I did review them: The complaint
18 in the case, the answer in the case, the interrogatories
19 to the jury, the medical reports concerning the plaintiff,
20 the deposition of Dr. Levin who was the plaintiff's
21 opthamologist, the insurance policies of the Kemper and
22 the Home, the expenditures of the Home Insurance Company
23 for maintenance, counsel fees, and so forth itemized,
24 financial statements of the vessel the Jenny C, the
25 school records of the plaintiff, the psychological reports

1 of the plaintiff, the appraisal of the Jenny C, the
2 structured settlement proposal, the general releases,
3 the application for annuity which was made for the
4 plaintiff, and I'll explain all these, and the release
5 of the defendant, Jenny C, from the notice provisions of
6 the plaintiff with reference to seizure of the vessel.
7 Plaintiff's attorneys had properly filed a notice which
8 prevented the Jenny C being sold so that it could be
9 seized to satisfy a judgment, if that became necessary.

10 I did receive all of these documents, and I reviewed
11 them all at length. I also reviewed and researched the
12 plaintiff's and defendant's memorandum concerning the
13 motion to limit liability of the defendants under 46 U.S.
14 Code 183 (a), and I did this not so that I could make
15 a decision on it, but so that I could inform the plaintiff
16 of the significance of it, and I came to an opinion
17 myself as to whether or not the limit of liability
18 would - whether the defendants would be successful.

19 In researching this, I did determine that the
20 defendants properly and timely set this up in their
21 answer so that defense wasn't necessary, but my opinion
22 was, and I informed the plaintiff of this later on,
23 that the plaintiff would probably prevail on this issue
24 because I felt that under 183 (a) there was privity or
25 knowledge in the sense that under the cases, Coryell

1 v. Phillips. And Peace and various other cases, the Clevecio
2 and especially the China Union Lines case, that the
3 condition that the plaintiff complained of which
4 made the vessel unseaworthy was something which the
5 owner knew about or if he had inspected properly
6 would have found out.

7 I state this because I want to inform the Court
8 that I informed the plaintiff that I thought he would
9 prevail on this, and he understood this, and he still
10 wants to take the settlement.

11 Now, following my research I had further conferences
12 with the various attorneys, and I had a meeting, another
13 meeting in my office on April 28, 1983 with Dennis Dimon,
14 the plaintiff, Cathy Dimon, his wife, his mother,
15 Mrs. Dimon, and Roger Hughes, his attorney. In the
16 intervening days, I had determined what the present value
17 of the structured settlement was by consultations with
18 actuaries, and I had also determined the availability of
19 annuity policies. The settlement, as it was agreed upon,
20 provided for a payment, a cash payment, of \$250,000; and
21 in addition to that, a structured settlement of \$1450.45
22 per month guaranteed for 20 years but which would continue
23 for the life of the plaintiff. The plaintiff, by the
24 way, was born on December 9, 1959. His life expectancy
25 is 49.7 years, and he is married, and he has two children.

1 Now, this structured settlement would -- The structured
2 payments would increase by three percent each year, and
3 I instructed the plaintiff in the second conference that
4 we had that this three percent per year was not - did not
5 keep up with the cost of living index which ordinarily
6 raises seven percent per year. He understood this, and
7 his mother, who is an intelligent woman, understood it,
8 and in fact, she immediately replied to me, but that
9 they had the advantage that there would be no income tax
10 paid, and all this money he received would be tax free.

11 At any rate, in - I questioned Mr. Hughes carefully
12 about the present value of this structured portion of
13 the settlement because there are many different present
14 values. I know from my experience that different
15 discount rates can be used and different companies will
16 give different amounts for the same amount of money.
17 Mr. Hughes had told me that when the settlement was
18 originally offered, I think he acted with care and expertise
19 by the way in this matter, when the - or his office
20 did, when the settlement was originally offered, the
21 structured settlement, Mr. Hughes asked the defendants
22 what it was costing them to pay for this structured
23 settlement, and they told him \$175,000. He then asked
24 that they allow him the \$175,000, and his office would
25 purchase an annuity policy for the plaintiff on the market

1 at the best rate that they could get it; and I checked out
2 the annuity policy and found that this is a very solid
3 and good return for \$175,000 with reference to the
4 stature of the company that's involved. I did find out,
5 and I instructed the plaintiff and his wife and mother
6 and Mr. Hughes, that it was possible to get a little bit
7 higher payments for the same \$175,000, as a matter of
8 fact, rather than \$1450.45 per month for the first year,
9 they could possibly get payments of up to as high as
10 \$1550 a month but that this - these would be with a
11 company that was not quite as highly rated as the company
12 that's being used. They understood this, and their
13 choice was to have the security of the company that was
14 that was used.

15 And so, the opinion that I came to, after consul-
16 tations with the experts, was that the \$175,000 was the
17 present value, a fair present value, of the settlement,
18 the structured portion of the settlement, and that the
19 annuity purchased for it was a good solid annuity with
20 a solid company at market rates.

21 Now, I instructed the plaintiff and his wife and
22 mother when we met with them that the verdict was \$710,000,
23 and he understood that, the contributory negligence was
24 found to be - comparative negligence, 12 and 1/2 percent
25 with 8 and 1/2 percent interest for two years. The total

1 came to \$720,650. The -- I determined from the insurance
2 policies from Mr. Allen and from Mr. Wells that there
3 were two insurance companies involved here. The Home
4 Indemnity which was the primary carrier had originally
5 \$100,000 coverage, and under the provisions of the policy,
6 they had paid certain payments out for maintenance of
7 the plaintiff and for attorneys' fees and so forth which
8 brought - which under the policy could be deducted from
9 their coverage, and therefore, brought the amount that
10 they had available to contribute to the settlement down
11 to roughly \$76,000.

12 The -- Mr. Allen -- That was the Home Indemnity.
13 And Mr. Allen's company, the American Motors, Kemper,
14 had a limit of liability of \$400,000. So, between the
15 two insurance companies, there was \$476,000 available
16 for contribution to the settlement.

17 I also requested financial statements concerning
18 the defendant, Jenny C, so that I could advise the
19 plaintiff as to his possibility of collecting any excess
20 against the defendant. And Mr. Spunt who represents the
21 Jenny C Incorporated, which is a Rhode Island corporation,
22 furnished me financial statement and a certificate of
23 his that that - this was an accurate financial statement.
24 As a matter of fact, he furnished me a - copies of the
25 corporate tax return of the corporation, Jenny C

1 Corporation, which revealed that the only asset of the
2 corporation was this vessel; and the vessel, I also asked
3 for and received an appraisal by a maritime expert of
4 the value of this vessel, and the value was some \$105,000.

5 The tax -- I'm sorry. I thought I heard something.
6 The tax return of the defendant, Jenny C, showed that
7 this vessel was carried on the books at about - if you give
8 me one moment.

9 (P A U S E)

10 The tax return indicated - corporate tax return of
11 the Jenny C Inc. on schedule L indicated that the
12 depreciable asset which was the vessel was carried on
13 the books at \$105,855, and less accumulated depreciation
14 carried on the books at \$62,705. I advised the
15 defendant - rather, the plaintiff of this; and in our
16 conference, I advised the plaintiff also of the
17 supplementary proceedings process and what would happen
18 if he sustained his judgment through appeal and proceeded
19 to try to get execution against the vessel. The plaintiff
20 very promptly stated to me that he didn't want to go
21 against the owner of the vessel who was a Mr. Gary
22 Champlin. He said he was very friendly with the Champlin
23 family. They've been very nice to him, and he said - I
24 can quote him verbatim, he wouldn't want to take away
25 anybody's livelihood, and he was very strong about this.

1 I discussed the plaintiff's medical history at
2 length with him and his personal history. He went to
3 the South Rose Elementary School to the sixth grade. He
4 went to South Kingstown Junior High School to the eighth
5 grade at which time he left, and he went to work. His
6 subjects were shop, woodworking, machine shop, so forth,
7 English, Science, Math. He failed everything in the
8 eighth grade excepting Mathematics, and he stated to me
9 that he got an A in Math. He couldn't pass anything
10 which required reading because he was unable to read.

11 I asked from his mother his psychological records,
12 and she presented me with this folder which have rather
13 voluminous records of psychological testing and reports
14 by the South Kingstown School Department, by Dr. Denhoff
15 of the Child Development Center, by Madeline Sullivan
16 who's a school psychologist, there are various educational
17 evaluations, various test forms. And I reviewed these.
18 These revealed that the plaintiff, Dennis Dimon, has
19 average intelligence. His I.Q. on a verbal scale was 87
20 which is dull normal. His -- On a performance scale,
21 his I.Q. was 110 which is high average. And on his
22 overall full scale I.Q. was 98 which is listed as average.
23 And all of the psychologists and doctors state that it
24 is average.

25 Dr. Denhoff found that the plaintiff had a cerebral

1 dysfunction and integrative language disturbance.
2 Various other psychologists have found things in this area
3 which would mean he had a perceptual handicap. His
4 mother has stated to me, although the records don't
5 state this in these words, but his mother has stated to
6 me that when she took him to the University of Rhode
7 Island for testing, they told her that he had borderline
8 dyslexia. And the sum and substance of all of these
9 reports were that he is a person who has average intel-
10 ligence but has a dysfunction with reference to reading,
11 and he has not been able to learn to read, and that's
12 why he gave so much concern to this Court.

13 I did find in talking with him that he understood
14 readily the things that I said to him; and as he was -
15 he was much better than average in Mathematics as his
16 school records show.

17 Now, when I had the conference with the plaintiff,
18 his mother, and his - and his wife, I spoke with him
19 first while the attorney was present, and then I asked
20 the attorney to leave, and I told everybody that I wanted
21 to be able to state to the Court that I talked with the
22 plaintiff and his mother and his wife outside the
23 presence of his attorney so that he could reply to my
24 questions with no pressure, with no fear of embarrassing
25 anybody. I asked him if he was satisfied with the

1 services that the attorneys performed, and he said that
2 he was. I asked him if he had any complaints or any
3 questions that he wanted to raise with me. At this time,
4 his mother had one question. She was of the understanding
5 that after the settlement was made, that the insurance
6 company would still pay for some cosmetic surgery to
7 Dennis' left eye. I called in Mr. Hughes, and he stated
8 categorically this was not so, that once this was done,
9 there was no more comeback against the company. I --
10 Dennis stated that he understood this. I told him that
11 from what I had gathered this surgery could cost five to
12 \$10,000. Asked him if he understood this. He said he
13 did, and he still wanted to go forward with the settlement.

14 Again, speaking with him outside the presence of
15 his attorney, I discussed the settlement sheet, and the
16 attorney's fees. Now, the plaintiff had originally
17 signed an agreement with the attorney's firm for a
18 one-third contingent fee. And by the way, I asked why
19 this firm in Boston was selected, and the plaintiff's
20 mother told me that she had - she looked for an admiralty
21 firm, a firm that specializes in admiralty. She talked
22 with a number of people in the area who had cases, found
23 out that this was a good firm. I say this to the Court
24 because it was a sophisticated choice that was made.
25 This is an admiralty firm. I know them to specialize in

1 this, and they're very familiar with the admiralty work.

2 The one-third contingency fee had been agreed to,
3 and this fee would have come out to a little bit more
4 than the \$141,485.47 that the attorneys are charging.
5 But they had agreed with Dennis that he would receive
6 out of the \$250,000 in cash \$100,000. So, they modified
7 their fee down by several hundred dollars in order to
8 allow \$100,000 balance to come to the plaintiff. So
9 that of the \$250,000 up front, once the attorneys'
10 costs are reimbursed to them for medical records,
11 depositions, and witness fees and so forth, and these
12 costs were quite modest, I thought, for a case of this
13 size, and Dr. Levin's bills were paid, and the attorney's
14 fees of \$141,485.47 which were modified down from
15 \$141,666.66 were deducted, the total bills and expenses
16 came to \$150,000, and the plaintiff will receive \$100,000
17 in cash. Although it has no part of this case, the
18 plaintiff understands that there is an IRS lien of
19 \$4679.35 which he will have to pay from his proceeds
20 which will bring his proceeds down to \$95,320.65.

21 I advised the plaintiff and his family of the pros
22 and cons. I told them that they had a judgment in excess
23 of \$700,000, that once the settlement of \$425,000 was
24 accepted, there would be no comeback whether there were
25 further hospitalizations or whatever. I discussed with

1 the plaintiff Dr. Levin's resume of his condition which
2 states that, in effect, that he has a tearing eye which
3 will always be subject to infection, that he will need
4 one or two more operations, that he has some problems
5 with depth perception which could make it difficult or
6 dangerous to work with sharp objects at close range; and
7 asked him how he was doing. He told me he has been
8 working on another vessel since the accident, and he
9 intends to continue working as a fisherman.

10 I told him that there would be a hearing in which
11 Judge Watson would decide whether or not the liability
12 in this case would be limited to the value of the vessel,
13 and that although I hadn't researched it as carefully
14 as I'm sure the Judge would, that my opinion, after my
15 research, was that he would prevail on this because of
16 what I said before, the privity or knowledge that could
17 be attributed to the owner of the vessel.

18 I also told him what the appeal process was. I
19 advised him, in my opinion, as to how long an appeal
20 would take before the First Circuit, and the outside
21 possibility of appeal to the United States Supreme Court.

22 The main thing I want to state to the Court is
23 that he understood what I was saying to him, and I took
24 care to point out the down side or the dark side of all
25 the settlement so that he could make an informed judgment,

1 and he told me that this structured settlement is more
2 money than he has ever earned as a fisherman, and he
3 will still be able to work as a fisherman. I asked him
4 what he was going to do with the \$100,000, and he stated
5 to me that he was going to buy a house for himself and
6 his family, he was going to make a modest down payment,
7 that he had a modest house near the University of Rhode
8 Island he was going to buy for \$77,000, he was going
9 to make a small down payment, and get a mortgage and put
10 the rest of it in the bank. He also wanted very much
11 the annuity because that would be something that would
12 keep coming to him and would be a guarantee against his
13 spending the money in an improvident way.

14 The earnings that he had made as a fisherman
15 reported on his income tax in 1980 were roughly \$11,000,
16 in 1979 roughly \$8,000, and in 1982 roughly \$12,000. So,
17 the amount he is receiving on the settlement is more than
18 he has ever earned as a fisherman.

19 I went over the copy of the settlement sheet with
20 the plaintiff in detail, and he told me he had already
21 gone over it with his attorneys, and he understood it
22 and was satisfied with all the expenses and the legal
23 fees.

24 I determined one other thing, your Honor, well,
25 several other things, but what's important here is I

1 asked about whether or not there were any hospital liens,
2 Blue Cross liens, or subrogation of any kind which would
3 take away from the amount of money that would be coming
4 to the plaintiff; and I determined that there is no Blue
5 Cross, there is no hospitalization, there's no subrogation
6 of any kind so that this sum of \$95,320.65 he will have
7 net to him after he pays the Internal Revenue lien.

8 One final thing I found out from Mr. Hughes that
9 the price or the terms of this annuity which he has
10 gotten a commitment for will change on May 6, 1983. We
11 can't tell whether the terms will be better or they will
12 be worse. The -- Mr. Hughes got an opinion from the
13 insurance people that they will probably be worse. This
14 is because of the fluctuating interest rates. But if
15 the contract -- excuse me. I think I said May 6, 1983.
16 If the contract is purchased on or before May 6, 1983,
17 then that amount that I have discussed with the Court
18 will be available.

19 In sum, your Honor, I did not attempt to advise
20 the plaintiff one way or another whether he should accept
21 this settlement. The plaintiff is an adult. I understood
22 my function to be to determine whether or not he understood
23 the terms of the settlement. I think that I exercised
24 an excess of caution and went maybe farther than I had
25 to, but I wanted to do this, to go into the plaintiff's

1 background, to go into the law of the case so that I
2 could tell him what, in my opinion, would be all the
3 downside risks of the settlement and make sure that he
4 understood these; and although I wasn't in any attempt
5 trying to evaluate the prospects on appeal, I did want
6 to tell him what could happen, that he could prevail on
7 the motion to limit liability, that he could prevail on
8 the motion - I thought he probably would prevail on that,
9 that he could prevail on the motion for new trial, that
10 he could prevail on appeal, and he could come out with a
11 judgment in excess of \$700,000 plus accumulated interest;
12 and he understood this. I also told him the possibilities
13 on the other side. The -- That -- And if he did want -
14 prevail on his judgment, that all he could get from the
15 companies would be some \$476,000 and would then have to
16 proceed against the corporation the vessel at forced
17 sale, might bring anywhere from fifty to \$100,000. He
18 would still come up short.

19 But as I said, he was very adamant about the fact
20 that he did not want to go against the corporation. He
21 did not want to deprive Mr. Champlin of his right to earn
22 a living. And the bottom line is that, in my opinion,
23 he understood the things that I was saying to him despite
24 the fact that he has this reading disability and cannot
25 read - can't read the releases or whatever. He is aware

1 of what's happening, and it is his choice and his free
2 choice to accept this settlement.

3 THE COURT: Any questions of Mr. Decof?

4 MR. ALLEN: No, your Honor.

5 MR. HUGHES: No, your Honor.

6 THE COURT: All right, no questions. Let me say
7 this, Mr. Decof, I certainly appreciate what you've
8 done for this Court. I must be candid and say I didn't
9 quite know what my jurisdiction was in this matter.
10 Counsel requested that I take it upon myself to evaluate
11 the settlement offer, and I really still don't know
12 whether that's within the jurisdiction of the Court; but
13 I've assumed the responsibility for whatever it's worth.

14 To begin with, I place on the record I consider
15 the report that you have just rendered an exhaustive
16 report detailing every element of the case which was
17 done in a highly professional manner and could only be
18 done of a man of your caliber and your experience in
19 this area of the law. Certainly, I think we ought to
20 place on the record that Mr. Decof is a leading member
21 of the Rhode Island Bar and who has, in addition, an
22 enviable reputation that extends well beyond the State.
23 It would not be inappropriate for me to ask you to submit
24 to the Court - I don't want to give you added work, but
25 if you have one, I would think you have one all made up,

1 a curriculum vitae of yours that's all typed. I would
2 like to --

3 MR. DECOF: Yes, your Honor, be happy to do that.

4 THE COURT: I would like to file your curriculum
5 vitae with the records of this case so that if it's
6 ever reviewed, they'll know the kind of person who has
7 rendered this report.

8 Now, also, I want to straighten out your fee at
9 this time. Are you prepared to state what your fee is?

10 MR. DECOF: Yes, your Honor. I notified the parties
11 that the Court had instructed me to present a bill for
12 my services in rendering this report, and my original
13 understanding was that this would be paid by the
14 plaintiff. However, Mr. Allen and Mr. Wells advised
15 that their insurance companies will pay this fee so that
16 the plaintiff will - will not have any more money coming
17 out of his area of settlement. I told Mr. Allen roughly
18 what my fee would be last Friday. But I have prepared
19 a bill which did not include this morning, but it came
20 to 18.5 hours at \$150 an hour which is, I think, a
21 reasonable fee, and this Court has held to be a reason-
22 able fee. It's less than I ordinarily charge per hour,
23 which comes to \$2775.

24 THE COURT: Okay.

25 MR. DECOF: We have another hour that came here.

1 I'm not going to make an issue out of that.

2 THE COURT: Well, since they asked for this hearing,
3 I feel at liberty to say I order that that fee be paid
4 and be part of this order of the Court; and I assume
5 that will be paid in 48 hours, and not 48 months.

6 MR. ALLEN: Your Honor, probably take about a week
7 to get it back from New York.

8 THE COURT: Well, let's say within one week, all
9 right? All right, I feel every avenue has been explored
10 to insure that this plaintiff has the capacity and does
11 indeed understand this settlement. Certainly, we can
12 say that he's made an informed judgment to accept the
13 offer; and as far as the Court is concerned, I can do no
14 more than say he apparently knows what he is doing, and
15 which is about as far as the Court can go. I do not
16 believe you expected the Court to go any further than that.
17 Am I correct?

18 MR. ALLEN: Yes, your Honor.

19 THE COURT: Okay. I might just add that there was
20 some thought originally when I first saw this man as to
21 whether or not he had the capacity to handle \$100,000 in
22 cash money which would be turned over to him. That
23 certainly is a lot of money. I do not believe it's
24 within the province of this Court to try - even attempt
25 to impress a trust upon it. He knows what's he's doing.

1 He's an adult. He's married, and I can only hope that
2 they use discretion because once that money's gone, it's
3 gone forever. It better be used wisely and carefully.

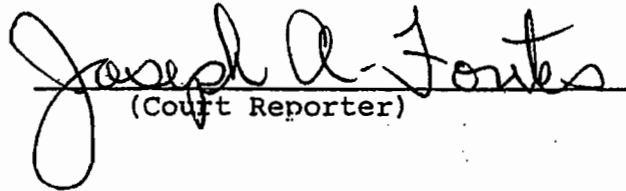
4 All right, I thank you very much, and I thank you
5 again, Mr. Decof. I certainly appreciate the responsi-
6 bility that you assumed, and I must say again as usual
7 you did it magnificently.

8 MR. DECOF: Thank you, your Honor.

9 (A D J O U R N E D)

10 * * * * *

1
2 I, Joseph A. Fontes, Official Court Reporter for the
3 United States District Court for the District of Rhode Island,
4 appointed pursuant to the provisions of Title 28, United States
5 Code, Section 753, do hereby certify that the foregoing is a
6 full, true and correct transcript of proceedings had in the
7 within-entitled and numbered cause on the date hereinbefore
8 set forth; and I do further certify that the foregoing
9 transcript has been prepared by me or under my direction.

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14 (Court Reporter)
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PAGES: 1 through 123
EXHIBITS: See Index

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05-11073 WGY

DENNIS DIMON,)
Plaintiff,)
)
VS.)
)
METROPOLITAN LIFE INSURANCE)
COMPANY, KEMPER INSURANCE)
COMPANY, MORGAN STANLEY DW)
INC., MICHAEL B. LATTI,)
LATI ASSOCIATES, and)
LATI & ANDERSON LLP,)
Defendants.)

DEPOSITION OF MICHAEL B. LATTI, a witness called on behalf of the Defendant, taken pursuant to the Provisions of the Federal Rules of Civil Procedure, before Julie A. Healey, a Certified Shorthand Reporter, Registered Professional Reporter, and Notary Public in and for the Commonwealth of Massachusetts, at the offices of Ciapciak & Associates, P.C., 99 Access Road, Norwood, Massachusetts, on July 25, 2006, commencing at 11:08 a.m.

COPLEY COURT REPORTING
101 Tremont Street
Boston, Massachusetts 02108

COPLEY COURT REPORTING, INC.
(617) 423-5841

<p>1 APPEARANCES:</p> <p>2 THE KAPLAN/BOND GROUP</p> <p>3 BY: Brian Keane, Esq.</p> <p>4 98 Black Falcon Avenue, Suite 301</p> <p>5 Boston, Massachusetts 02210</p> <p>6 Counsel for the Plaintiff</p> <p>7</p> <p>8 CIAPCIAK & ASSOCIATES, P.C.</p> <p>9 BY: Peter M. LeBlanc, Esq.</p> <p>10 99 Access Road</p> <p>11 Norwood, Massachusetts 02062</p> <p>12 Counsel for the Defendant,</p> <p>13 Metropolitan Life Insurance Company</p> <p>14</p> <p>15 SULLIVAN WEINSTEIN & McQUAY, P.C.</p> <p>16 BY: Sandra Sue McQuay, Esq.</p> <p>17 Two Park Plaza</p> <p>18 Boston, Massachusetts 02116-3902</p> <p>19 Counsel for the Defendant,</p> <p>20 Morgan Stanley DW, Inc.</p> <p>21</p> <p>22 TODD & WELD, LLP</p> <p>23 BY: John E. DeWick, Esq.</p> <p>24 28 State Street</p> <p>25 Boston, Massachusetts 02109</p> <p>26 Counsel for the Defendants,</p> <p>27 Michael B. Latti, Latti Associates,</p> <p>28 and Latti & Anderson LLP</p> <p>29</p> <p>30 DRINKER, BIDDLE & REATH, LLP (VIA TELEPHONE)</p> <p>31 BY: Kevin Golden, Esq.</p> <p>32 One Logan Square</p> <p>33 18th and Cherry Streets</p> <p>34 Philadelphia, Pennsylvania 19103-6969</p> <p>35 Counsel for the Defendant,</p> <p>36 Kemper Insurance Company</p>	<p>1 MR. DeWICK: Kemper.</p> <p>2 DIRECT EXAMINATION</p> <p>3 BY MR. LeBLANC:</p> <p>4 Q. My name is Peter LeBlanc, I represent</p> <p>5 MetLife.</p> <p>6 A. Okay.</p> <p>7 Q. And I guess my first question is could</p> <p>8 you state your full name?</p> <p>9 A. Michael B. Latti.</p> <p>10 Q. And what does the B. stand for?</p> <p>11 A. Bruce.</p> <p>12 Q. Okay, and where do you currently reside?</p> <p>13 A. 26 Surf, S-U-R-F, Point Road, York,</p> <p>14 Maine, it's actually York Harbor. My mailing</p> <p>15 address is York, Maine.</p> <p>16 Q. Okay, and how long have you resided</p> <p>17 there?</p> <p>18 A. About fifteen or sixteen years.</p> <p>19 Q. Okay, and before you moved to York, where</p> <p>20 did you reside before then?</p> <p>21 A. In Concord, Concord, Mass.</p> <p>22 Q. Okay, and how long did you reside in</p> <p>23 Concord?</p> <p>24 A. Oh, thirty years or so, thirty years</p>
<p>1 INDEX</p> <p>2 <u>Witness Direct Cross Redirect Recross</u></p> <p>3 MICHAEL B. LATTI</p> <p>4 (By Mr. LeBlanc) 5 118</p> <p>5 (By Mr. Keane) 97</p> <p>6 (By Mr. Golden) 112</p> <p>7</p> <p>8</p> <p>9</p> <p>10 EXHIBITS</p> <p>11 <u>Exhibit No. Page</u></p> <p>12 1 Settlement Sheet 43</p> <p>13 2 Pages 153-155 of 62</p> <p>14 Dennis Dimon's Deposition</p> <p>15 3 Fax dated 6/12/03 65</p> <p>16 4 Annuity Application 76</p> <p>17 5 Letter dated 8/12/83 79</p> <p>18 6 Letter dated 9/26/83 82</p> <p>19 7 Letter dated 10/10/83 82</p> <p>20 8 Letter dated 10/12/83 86</p> <p>21 9 Docket Sheet 104</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 plus.</p> <p>2 Q. Okay. Can you tell us how long you've</p> <p>3 been in the practice of law?</p> <p>4 MR. DeWICK: Objection.</p> <p>5 BY MR. LeBLANC:</p> <p>6 A. I was actively practicing from 1960 until</p> <p>7 '99 when I became of counsel with the firm of</p> <p>8 Latti Associates. It later became Latti &</p> <p>9 Anderson, and I, today, I'm of counsel, but I'm</p> <p>10 not actively practicing.</p> <p>11 Q. Okay, and in 1999 when you became of</p> <p>12 counsel, who were the partners at Latti &</p> <p>13 Associates at that time?</p> <p>14 A. David Anderson, Carolyn Latti, and</p> <p>15 myself.</p> <p>16 Q. Okay, and what's Carolyn Latti's</p> <p>17 relationship to you?</p> <p>18 A. It's my daughter.</p> <p>19 Q. And Mr. Anderson?</p> <p>20 A. Son-in-law.</p> <p>21 Q. Okay. What was the corporate form, the</p> <p>22 business form of Latti & Associates in 1983?</p> <p>23 A. It was probably, '83, it was Michael B.</p> <p>24 Latti and Roger E. Hughes doing business as Latti</p>
<p>1 PROCEEDINGS</p> <p>2 MICHAEL B. LATTI, having been</p> <p>3 satisfactorily identified and duly sworn by the</p> <p>4 Notary Public, was examined and testified as</p> <p>5 follows:</p> <p>6 MR. LeBLANC: First, does everyone</p> <p>7 want to enter into the usual stipulations, waive</p> <p>8 objections except as to form, waive notary?</p> <p>9 MR. DeWICK: Is thirty days?</p> <p>10 THE WITNESS: One thing, I want to</p> <p>11 read it and sign it, read and sign.</p> <p>12 MR. DeWICK: Okay.</p> <p>13 MR. LeBLANC: Do you want sixty days?</p> <p>14 MR. DeWICK: I don't care, thirty</p> <p>15 days is enough.</p> <p>16 MR. LeBLANC: Okay, thirty days.</p> <p>17 Does everyone agree to that?</p> <p>18 MR. KEANE: Yes.</p> <p>19 MR. DeWICK: Yes.</p> <p>20 MS. McQUAY: Yes.</p> <p>21 MR. LeBLANC: Kevin, can you hear us?</p> <p>22 MR. GOLDEN: Yes, that's fine by me.</p> <p>23 MR. LeBLANC: Okay.</p> <p>24 THE WITNESS: Kevin represents?</p>	<p>1 Associates, most of '83.</p> <p>2 Q. Okay. When you say doing business as,</p> <p>3 was it a partnership?</p> <p>4 A. It was a partnership, Roger Hughes became</p> <p>5 a partner in March of '83, but the agreement was</p> <p>6 predated to January 1st, '82, so, he actually</p> <p>7 became a partner in '82, January 1st, '82.</p> <p>8 Q. Were there any other partners at that</p> <p>9 time?</p> <p>10 A. No.</p> <p>11 Q. Any associates?</p> <p>12 A. There was about eight or nine associates</p> <p>13 that worked for the firm.</p> <p>14 Q. Okay, and what was the agreement between</p> <p>15 the firm and the associates at that time?</p> <p>16 A. I don't understand your question.</p> <p>17 Q. Did you have agreements with the</p> <p>18 associates about their employment with Latti &</p> <p>19 Associates?</p> <p>20 A. They were employees, there wasn't a</p> <p>21 written contract, they were employed day-to-day I</p> <p>22 guess or year to year.</p> <p>23 Q. Okay. Did Latti & Associates provide</p> <p>24 those employees benefits?</p>

8

1 A. It wasn't Latti & Associates, it's Latti
 2 Associates.
 3 Q. Okay, thanks for clearing that up, there
 4 was some questions about that before.
 5 A. Yes, it's Latti Associates.
 6 Q. Did Latti Associates provide those
 7 employees benefits?
 8 A. I don't, what time are you referring to?
 9 There was a time -- first of all, at that time in
 10 '83, there's no question there were benefits, they
 11 were Blue Cross and Blue Shield and there was
 12 pension benefits, it was a defined pension plan.
 13 I'm almost sure it was '83 that we had
 14 that. I know there was Blue Cross and Blue
 15 Shield. At some point, we developed a defined
 16 pension plan, and that continued until '94, or I'm
 17 not sure, yes, until '94, it continued until '94
 18 or '95.
 19 Q. Okay. Did these employees have, were
 20 they covered by a malpractice insurance policy?
 21 A. Yes.
 22 Q. Were the partners covered by the same
 23 policy?
 24 A. Yeah.

9

1 Q. And do you know the name of the company?
 2 A. Oh, no, not at that time, no. You're
 3 referring to '83 or '84?
 4 Q. Yes.
 5 A. No.
 6 Q. The early 80's.
 7 A. No, no.
 8 Q. But you're certain there was insurance
 9 coverage?
 10 A. I'm positive there was malpractice
 11 coverage.
 12 Q. Do you know what your bar number is, your
 13 Massachusetts bar number?
 14 A. No, no.
 15 Q. Do you have a card?
 16 A. I have a card, yeah. I do not have it on
 17 me though. I still am listed at the bar
 18 association, the Board of Bar Overseers.
 19 Q. Did you go through a process to change
 20 from active to inactive status?
 21 A. No, I'm still active status. I still go
 22 to court, but I choose not to go to court at this
 23 time. I'm retired basically.
 24 Q. Okay. Do you have any active cases at

10

1 this time?
 2 A. No, none. The only active case is this
 3 case.
 4 Q. An active case where you're representing
 5 another party?
 6 A. No.
 7 Q. Okay, and have you ever had a complaint
 8 filed against you with the Board of Bar Overseers?
 9 A. I've had complaints, they've all been
 10 dismissed as far as I can remember. I know of no
 11 complaint that ever went to the hearing stage.
 12 Q. And what did these complaints allege?
 13 A. I don't even remember. They were
 14 frivolous, and they were dismissed. By memory, I
 15 know of no complaint that was filed that ever went
 16 to a hearing stage, they were all dismissed.
 17 Q. And how many complaints are we talking
 18 about?
 19 A. I don't know, I don't remember. Maybe,
 20 maybe three or four in forty-six years people have
 21 filed, but none recently.
 22 Q. Do you know of any complaints that were
 23 filed against other attorneys at Latti
 24 Associates --

11

1 A. Yes.
 2 Q. -- for that early 80's period?
 3 A. I don't know whether it was in the 80's,
 4 I think it was in the 80's, early 80's, there was
 5 a complaint filed against Joe Flannery.
 6 Q. And do you know what the basis of that
 7 complaint was?
 8 A. He was an alcoholic, unknown to me, and
 9 he was a diabetic. The person filed the complaint
 10 that he entered into a settlement on a case which
 11 he never opened in the office. He handled himself
 12 as his own.
 13 He had no docketing or anything available
 14 to him. He didn't docket it and he let it go to
 15 judgment for the defendant. He settled the case
 16 with her with his own money. He faked a release
 17 with an insurance company, but he paid the money.
 18 He was disbarred indefinitely or he was
 19 suspended indefinitely by the hearing committee of
 20 the bar association, and we appealed the case, I
 21 appealed the case and a person by the name of
 22 Jerry Facher from Hale and Dorr appealed the case,
 23 and an opinion was written by Liachos, the supreme
 24 judge of the Supreme Judicial Court that alcohol

12

1 was a disease, alcoholism, and he had suffered
 2 enough, and he was reinstated by the chief judge,
 3 and he was with me several, I think several years,
 4 and then he left to go on his own.
 5 Q. Okay.
 6 A. But he was a recovering alcoholic, he is
 7 at present, at the present time.
 8 Q. Do you know what time period when this
 9 complaint was filed?
 10 A. No, it was either in the late 70's or
 11 early 80's. His alcoholism was unknown to me, he
 12 drank vodka.
 13 Q. Now, you said that you brought an appeal
 14 and that this other attorney brought an appeal?
 15 A. I did and Jerry Facher from Hale and
 16 Dorr. We appealed the case from the lower level
 17 of the hearing before the bar association.
 18 Q. Okay, and at any time was Latti
 19 Associates involved in the complaint?
 20 A. That I don't know whether it was -- well,
 21 it became Latti Associates when Kaplan -- well, we
 22 dissolved the partnership in '77 or '78, it was
 23 probably Latti Associates at that time when we
 24 appealed it.

13

1 Q. Okay, and when you say we dissolved the
 2 partnership, are you referring to your partnership
 3 with Mr. Kaplan, David Kaplan?
 4 A. Yes.
 5 Q. And how did that partnership come to be
 6 dissolved?
 7 A. David Kaplan cheated and was dishonest in
 8 the manner in which he hid at least three vessels
 9 that he had constructed, three fishing vessels in
 10 Brownsville, Texas. I became aware of that only
 11 through someone telling me that it was the names
 12 of his children instead of in his names.
 13 I went up to the State House and I found
 14 that was true, that there were three vessels, and
 15 people that we had sued, he was insured by
 16 different companies that we had brought suit on
 17 behalf of fishermen, so, it was a terrible
 18 conflict.
 19 I had no knowledge whatever of him
 20 building these boats, and I thought he was trying
 21 cases and taking time to practice law, but he
 22 wasn't.
 23 These three boats came to Boston, and I
 24 confronted him with the story that I just stated.

<p>14</p> <p>1 He denied it at first and then admitted it, and I 2 dissolved the partnership because of that, and he 3 continued then in a, we had a dissolution, we were 4 represented. I bought him out, I prevailed in the 5 dissolution and bought him out and paid him, I 6 don't remember the percentage on every case that 7 was in the office, and he agreed not to practice, 8 and we caught him practicing law, which at that 9 time was lawful.</p> <p>10 You could enter into a noncompete clause 11 and agreement. Since that time it has come about 12 that you cannot prevent a person from practicing 13 law, and he agreed in the agreement of dissolution 14 and compromise not to practice law, and he did 15 practice law, and he was acting as the lawyer for 16 the same client that we represented. That's how 17 we found that he practiced law.</p> <p>18 So, I let him practice law, I could care, 19 I did not care if he practiced law or not, and I 20 relieved him of the obligation and he continued to 21 practice law. We dissolved in, I guess in '77.</p> <p>22 Q. And what was the name of the firm that 23 both of you were partners in?</p> <p>24 A. At one point, I can remember that it was</p>	<p>17</p> <p>1 me and then we would decide, and it was always, it 2 seemed to me it was never any conflict with Joe 3 Flannery. I was just shocked by what happened.</p> <p>4 Q. When Mr. Flannery took that case outside 5 the office, did you feel that that should have 6 been a Latti Associates case?</p> <p>7 A. Did I think that it should have been, no 8 question it should have been a Latti Associates 9 case because other than, a lawyer was not allowed 10 to practice separate and compete with Latti 11 Associates.</p> <p>12 Cases came to Latti Associates through 13 the associates, and sometimes they would get 14 credit in bonus time, all the associates got 15 bonuses.</p> <p>16 So, if they brought cases into the 17 office, that would be accounted for when the time 18 for bonus came. In a sense, they owned the case, 19 even though they processed it through Latti 20 Associates.</p> <p>21 So, it was mentally so much for ownership 22 for a case and so much for processing the case, 23 and the formula was not set, but the person would 24 be given merit depending on the case itself. In</p>
<p>15</p> <p>1 Kaplan & Latti and then we had Kaplan Latti and I 2 think Flannery for a while, I'm not sure. These 3 were the two entities, but I'm not sure when we 4 dissolved whether it was Kaplan Latti & Flannery 5 or Kaplan & Latti.</p> <p>6 Q. Are you sure or do you have a specific 7 recollection whether Mr. Flannery was a partner in 8 that pre 1977 firm?</p> <p>9 A. At some point, Joseph Flannery, prior to 10 the hearing on suspension, he was a limited 11 partner. He got a percent that was above a 12 certain figure gross that we made, and that only 13 lasted I believe for one or two years, that's it.</p> <p>14 Q. And do you recall what years those were?</p> <p>15 A. No, not at all.</p> <p>16 Q. Do you recall if it was before he got 17 suspended?</p> <p>18 A. That I recall because we did not use his 19 name after he was suspended, and he was released 20 at that time when the matter was pending. 21 According to the bar association, he was no longer 22 allowed to practice.</p> <p>23 Q. Now, when Mr. Flannery was a limited 24 partner and he received a percentage of profits</p>	<p>18</p> <p>1 other words, a large case, a small case.</p> <p>2 Q. Okay. Who made the decision about how 3 much credit an individual associate would get?</p> <p>4 A. I would make the decision along with my 5 partners.</p> <p>6 Q. Okay.</p> <p>7 A. They would have input depending on what 8 interest they had. Roger Hughes had more of an 9 input because he was, in all the profits, he had 10 15 percent which accounted for a significant sum 11 of money at Latti Associates when he was a 12 partner.</p> <p>13 Joe Flannery had very little input 14 because he was a limited partner, he was like a 15 junior partner.</p> <p>16 Q. Okay. When you just testified all my 17 partners, was there ever a time between '77 and 18 '99 that you had more than one partner?</p> <p>19 A. I can't answer that. I don't know when 20 Flannery was a limited partner, I don't remember 21 when that was. I doubt, I doubt whether it was 22 after '77 because David Kaplan and I were together 23 from 1960 to 1977, and Joseph Flannery became a 24 limited partner during that time, so, it was</p>
<p>16</p> <p>1 after a certain formula was applied, what other 2 responsibilities or duties or authority did he 3 have?</p> <p>4 A. That's difficult, very broad to answer. 5 He was just a practicing attorney, tried and 6 settled cases, and I don't know what you're 7 driving at here for the question. It's too broad.</p> <p>8 Q. Did he make hiring and firing decisions 9 at the firm?</p> <p>10 A. No.</p> <p>11 Q. Did he make decisions about what cases 12 you would bring into the firm?</p> <p>13 A. Yes.</p> <p>14 Q. On his own or in consult with you?</p> <p>15 A. No, he would, he would talk to me, and we 16 would decide what to take and which cases to 17 prosecute and that type of thing, yeah, oh, yeah.</p> <p>18 Q. Did he have authority to overrule your 19 decisions about what cases to take if he felt 20 strongly about a case?</p> <p>21 A. We weren't that way, we were very close, 22 Joe Flannery and myself. We also worked out an 23 understanding where it was unanimous, either he or 24 me or I would listen to him and he would listen to</p>	<p>19</p> <p>1 prior.</p> <p>2 Q. Okay. During the time that you were a 3 partner with Roger Hughes, did you have any other 4 partners during that period of time?</p> <p>5 A. I don't think so.</p> <p>6 Q. Okay, and Mr. Hughes' partnership 7 interest was 15 percent?</p> <p>8 A. Yes.</p> <p>9 Q. Was your partnership interest 85 percent?</p> <p>10 A. Yes.</p> <p>11 Q. Okay, and in terms of decision making 12 authority at the firm Latti Associates when 13 Mr. Hughes was a partner, who had the decision 14 making authority at that time?</p> <p>15 A. Both of us.</p> <p>16 Q. Okay.</p> <p>17 A. In fact, Roger Hughes had a great deal of 18 authority in decision making, and he made it on 19 his own because I had back surgery in December of 20 '82 at the Mass. General Hospital, I had two discs 21 removed, and I was out of the office from, I would 22 say November the 7th or 8th until February, and 23 even in February I only came in maybe two or three 24 times for either settling up a case or when I had</p>

<p style="text-align: right;">20</p> <p>1 to.</p> <p>2 I was on trial when I collapsed in the</p> <p>3 courtroom and went to the Mass. General. I</p> <p>4 remember coming in for that, and I don't remember</p> <p>5 sitting, I was only allowed to stand, stand or lie</p> <p>6 down, and I couldn't sit until probably May or</p> <p>7 June of that year.</p> <p>8 So, I was not in the office a great deal</p> <p>9 at the time, and Roger Hughes was very involved in</p> <p>10 the decision making because he was my partner and</p> <p>11 at that time very close.</p> <p>12 Q. And when you say at that time, you mean</p> <p>13 that 1982, '83 period?</p> <p>14 A. I mean from November until I got on my</p> <p>15 feet, basically it was May or June. I used to</p> <p>16 take depositions lying down in our conference</p> <p>17 room.</p> <p>18 Q. Okay.</p> <p>19 A. During that period of time of April and</p> <p>20 May, I remember numerous cases. I was excused</p> <p>21 from participating in trials in the Federal Court</p> <p>22 for months, I think six or eight months.</p> <p>23 Q. And when you say at that time, that's the</p> <p>24 time period you're referring to?</p>	<p style="text-align: right;">23</p> <p>1 A. Did I do anything, I met with Jed</p> <p>2 yesterday for about an hour and fifteen minutes.</p> <p>3 In that meeting, he showed me some documents that</p> <p>4 had been marked and the exhibits in depositions.</p> <p>5 MR. DeWICK: I'm just going to make</p> <p>6 sure we don't disclose anything we discussed in</p> <p>7 that meeting.</p> <p>8 THE WITNESS: Okay, I'm not going to.</p> <p>9 BY MR. LeBLANC:</p> <p>10 A. And he gave me depositions of Roger</p> <p>11 Hughes and the plaintiff, that's it, and I looked</p> <p>12 at the documents, and that was it.</p> <p>13 Q. Okay, and when you say he gave you the</p> <p>14 depositions of Mr. Hughes and --</p> <p>15 A. Copies.</p> <p>16 Q. He gave you transcripts?</p> <p>17 A. Yes, of the depositions of Hughes and the</p> <p>18 plaintiff.</p> <p>19 Q. And can you describe which documents you</p> <p>20 reviewed?</p> <p>21 A. All I remember is seeing different</p> <p>22 letters from Kemper, Metropolitan, and different</p> <p>23 documents like that that were exhibits in</p> <p>24 depositions.</p>
<p style="text-align: right;">21</p> <p>1 A. I'm referring from May, November of '82</p> <p>2 until at least when I got on my feet in September</p> <p>3 of '83.</p> <p>4 Q. And during that period of time or during</p> <p>5 the period of time where Mr. Hughes was a partner,</p> <p>6 did he have the authority to hire and fire</p> <p>7 employees?</p> <p>8 A. He had the, subject to my consent or</p> <p>9 approval, but he could bring up an employee and</p> <p>10 hire them or fire them. He was in complete, I</p> <p>11 wasn't even there at the office. I was flat on my</p> <p>12 back in bed for months.</p> <p>13 Q. Likewise, bringing cases into the firm,</p> <p>14 did Mr. Hughes need your consent or approval to</p> <p>15 bring cases into the firm?</p> <p>16 A. He didn't need my approval, he just</p> <p>17 brings them into the firm. He knows that's the</p> <p>18 rule, that every case comes into the firm and is</p> <p>19 processed by the firm.</p> <p>20 He doesn't need my approval or my</p> <p>21 sanction or anything. He makes his own decision,</p> <p>22 what cases to bring in. If the case was not</p> <p>23 meritorious and I knew it, I would say something</p> <p>24 to him, "We're not going to take that case," and</p>	<p style="text-align: right;">24</p> <p>1 Q. Okay. Before you saw those documents</p> <p>2 yesterday, have you seen them before, any of them?</p> <p>3 A. I have seen them before, some of them,</p> <p>4 probably not all of them. They were sent to me</p> <p>5 when my deposition was noticed originally in May</p> <p>6 by Jed, and I saw some of them but not all of</p> <p>7 them.</p> <p>8 Q. Okay. So, prior to May, did you see any</p> <p>9 of those documents, recollect seeing any of those</p> <p>10 documents?</p> <p>11 A. Not that I -- rephrase your question or</p> <p>12 ask it in another way.</p> <p>13 MR. LeBLANC: Or we can have the</p> <p>14 court reporter read it back to you.</p> <p>15 (Last question read back by the court</p> <p>16 reporter.)</p> <p>17 BY MR. LeBLANC:</p> <p>18 A. Not the ones that he sent, that was the</p> <p>19 first time I saw those documents. I might have, I</p> <p>20 don't -- no, the answer is no, that's the first</p> <p>21 time in May that I saw those documents that I</p> <p>22 remember.</p> <p>23 Q. Okay. Do you remember Latti & Associates</p> <p>24 having a client named Dennis Dimon?</p>
<p style="text-align: right;">22</p> <p>1 he'd say "Well, we'll take it," and we'll work it</p> <p>2 out. He'd tell me the pros and cons, and I would</p> <p>3 listen, and then it was always a decision by both</p> <p>4 of us.</p> <p>5 Q. In terms of the operation of Latti</p> <p>6 Associates during that period of time when you had</p> <p>7 your back surgery, the firm continued to operate</p> <p>8 during that period of time; is that correct?</p> <p>9 A. Continued to operate with the associates</p> <p>10 and with Roger Hughes in charge.</p> <p>11 Q. And --</p> <p>12 A. And the paralegals and the secretaries</p> <p>13 and everybody.</p> <p>14 Q. Okay, and it continued to work on cases</p> <p>15 and handle cases?</p> <p>16 A. Yeah.</p> <p>17 Q. And be responsible for decisions made</p> <p>18 about cases and activity in cases?</p> <p>19 A. Right, yes.</p> <p>20 Q. Did you do anything to prepare for</p> <p>21 today's deposition?</p> <p>22 A. I don't understand your question.</p> <p>23 Q. Did you do anything to prepare for</p> <p>24 today's deposition?</p>	<p style="text-align: right;">25</p> <p>1 A. Yes.</p> <p>2 Q. And what do you recall about that</p> <p>3 representation?</p> <p>4 A. That's very broad, what do I recall about</p> <p>5 the representation, it's too broad to answer.</p> <p>6 Q. Okay. Do you recall that he was a</p> <p>7 client?</p> <p>8 A. He was a client.</p> <p>9 Q. And do you recall that the firm was his</p> <p>10 attorney of record?</p> <p>11 A. We were attorney of record, right.</p> <p>12 Q. And that the firm represented Mr. Dimon</p> <p>13 in a personal injury action?</p> <p>14 A. Yes.</p> <p>15 Q. Okay, and that the firm entered an</p> <p>16 appearance on behalf of Mr. Dimon in Federal</p> <p>17 Court?</p> <p>18 A. We must have, I think that's correct,</p> <p>19 that if we represented him, that we filed an</p> <p>20 appearance. I don't remember filing an appearance</p> <p>21 though.</p> <p>22 Q. Do you recall ever meeting with</p> <p>23 Mr. Dimon?</p> <p>24 A. I do remember a meeting with Mr. Dimon,</p>

<p>26</p> <p>1 probably two.</p> <p>2 Q. Can you tell us what happened at those</p> <p>3 meetings?</p> <p>4 A. The first meeting with Dennis Dimon that</p> <p>5 I remember was after the verdict that Joe Flannery</p> <p>6 got, I don't remember the amount, but it was a</p> <p>7 good verdict, and I met with Dimon, Dennis Dimon I</p> <p>8 would say sometime in the beginning of April as I</p> <p>9 remember it of '83.</p> <p>10 He was undecided at that time whether to</p> <p>11 go with Joseph Flannery, Joseph Flannery had left,</p> <p>12 or to stay with Latti Associates and continue the</p> <p>13 case with Latti Associates. It was being</p> <p>14 appealed, I do remember that, by the boat owner,</p> <p>15 meaning the insurance company involved.</p> <p>16 I convinced him to stay with Latti</p> <p>17 Associates and he did stay with Latti Associates.</p> <p>18 I remember, that's all I remember of that meeting.</p> <p>19 I met with Dimon I'd say a couple weeks after, and</p> <p>20 I explained to him the settlement that, I believed</p> <p>21 Rogers Hughes gave me the particulars of the</p> <p>22 settlement. I do not remember settling the Dimon</p> <p>23 case.</p> <p>24 I recommended the settlement to Dimon, I</p>	<p>29</p> <p>1 A. Mr. Who?</p> <p>2 Q. Dimon.</p> <p>3 A. Simon?</p> <p>4 Q. Dimon, Dennis Dimon?</p> <p>5 A. Dennis Dimon, what his what?</p> <p>6 Q. His educational level or educational</p> <p>7 status was?</p> <p>8 A. No, only I've learned from reading his</p> <p>9 deposition, I think he said that he was seventh or</p> <p>10 eighth grade, that's it, but I don't remember</p> <p>11 that. I read his deposition last night.</p> <p>12 Q. Did anything in his deposition stand out</p> <p>13 to you as being inaccurate or incorrect?</p> <p>14 A. I have to object to that question, that</p> <p>15 is so broad.</p> <p>16 Q. Mr. Latti, you can't object, you're not</p> <p>17 an attorney.</p> <p>18 MR. DeWICK: Objection.</p> <p>19 BY MR. LeBLANC:</p> <p>20 A. I will not answer that question because</p> <p>21 it's too broad, I don't understand it.</p> <p>22 Q. Okay. Did you read Mr. Dimon's</p> <p>23 deposition?</p> <p>24 A. Yes.</p>
<p>27</p> <p>1 remember that, and that's all I remember. Oh,</p> <p>2 excuse me, and Dimon agreed to the settlement that</p> <p>3 was negotiated by somebody else. I could have had</p> <p>4 some input into the settlement, but I do not</p> <p>5 remember any input whatsoever.</p> <p>6 Q. So, other than these two meetings in</p> <p>7 April of 1982, did you ever have --</p> <p>8 A. No, '83.</p> <p>9 Q. '83, in 1983, did you ever have any other</p> <p>10 meetings with Mr. Dimon?</p> <p>11 A. That I don't remember.</p> <p>12 Q. Do you ever recall speaking with him on</p> <p>13 the phone at any time?</p> <p>14 A. I don't remember. I just would like the</p> <p>15 record to show that I have processed literally</p> <p>16 thousands of cases, thousands, both class actions,</p> <p>17 multi district, and Dennis Dimon does not stand</p> <p>18 out in my mind because of the conversations I had</p> <p>19 with him twenty-eight years ago, I just don't</p> <p>20 remember.</p> <p>21 Q. When you say you processed thousands of</p> <p>22 cases, are you talking about in the interim</p> <p>23 between 1982 and today or just throughout your</p> <p>24 career?</p>	<p>30</p> <p>1 Q. Was there anything in there that you</p> <p>2 found to be inaccurate?</p> <p>3 MR. DeWICK: Objection.</p> <p>4 BY MR. LeBLANC:</p> <p>5 A. I skip read it and I cannot point out</p> <p>6 unless you ask me a question specifically what was</p> <p>7 wrong with his deposition, what part and go to</p> <p>8 that part. I'm not going through 190 pages and</p> <p>9 answer that question. It is too broad.</p> <p>10 Q. And the pages you read, I'm not asking</p> <p>11 you to ratify the entire deposition, I'm asking</p> <p>12 you if you read the deposition, were there or was</p> <p>13 there anything in the deposition that you believe</p> <p>14 to be inaccurate?</p> <p>15 MR. DeWICK: Objection.</p> <p>16 BY MR. LeBLANC:</p> <p>17 A. Again, I ask you to state certain parts,</p> <p>18 what part was inaccurate.</p> <p>19 Q. Okay. I've asked a question, are you</p> <p>20 refusing to answer the question?</p> <p>21 A. No, I can't answer that question, I can't</p> <p>22 answer it. If you want to delineate the parts of</p> <p>23 the deposition that you're referring to that were</p> <p>24 inaccurate, I can answer that, but I cannot answer</p>
<p>28</p> <p>1 A. No, over the period of forty some odd</p> <p>2 years of practicing law.</p> <p>3 Q. Do you ever recall writing any letters to</p> <p>4 Mr. Dimon?</p> <p>5 A. No.</p> <p>6 Q. Do you ever recall or do you recall if</p> <p>7 anyone else attended the meetings you had with</p> <p>8 Mr. Dimon?</p> <p>9 A. That I remember, I believe his, I have a</p> <p>10 memory that they were attended by the mother and</p> <p>11 by the wife, and I believe one if not both of the</p> <p>12 meetings that I remember Roger Hughes was present</p> <p>13 during those discussions.</p> <p>14 Q. Did it cause you any surprise that a</p> <p>15 young twenty something man would bring his mother</p> <p>16 and wife to a meeting?</p> <p>17 A. No, not at all, not a seaman because a</p> <p>18 seaman constantly brought somebody with him to</p> <p>19 interpret, to listen to, to understand because</p> <p>20 most of the seamen, to the extent we represented</p> <p>21 them, did not have an education, most of them did</p> <p>22 not have an education.</p> <p>23 Q. Okay. Do you know what Mr. Dimon's</p> <p>24 educational status was, or?</p>	<p>31</p> <p>1 each question, the answer to the question that the</p> <p>2 whole deposition was other accurate or inaccurate.</p> <p>3 There were parts that weren't.</p> <p>4 Q. What parts were inaccurate then?</p> <p>5 A. I don't remember what parts were</p> <p>6 inaccurate then.</p> <p>7 Q. We'll come back to that. In terms of</p> <p>8 which attorney at Latti Associates handled</p> <p>9 Mr. Dimon's case, who was primarily responsible</p> <p>10 for that case?</p> <p>11 A. That's difficult to say. At what time?</p> <p>12 Q. In 1983.</p> <p>13 A. In '83, the case probably was tried</p> <p>14 according to the records by Joseph Flannery and I</p> <p>15 do have a memory that he tried the case. The case</p> <p>16 was, and I think Roger Hughes had some input into</p> <p>17 the case.</p> <p>18 Again, I was not present during that time</p> <p>19 that it was tried in the office. It was tried in</p> <p>20 February of '83, and after Joseph Flannery got the</p> <p>21 verdict, the case was assigned completely to Roger</p> <p>22 Hughes and he was responsible for the case.</p> <p>23 Q. And at that point he was a partner at</p> <p>24 Latti Associates?</p>

<p style="text-align: right;">32</p> <p>1 A. Correct.</p> <p>2 Q. Okay, and in fact in this period of time</p> <p>3 after your back surgery in April of 1983, you had</p> <p>4 at least two meetings or two meetings that you</p> <p>5 recollect with Mr. Dimon?</p> <p>6 A. Yes.</p> <p>7 Q. Is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Now, do you recall if you came to</p> <p>10 the office that day or those days just to meet</p> <p>11 with Mr. Dimon or were you there generally</p> <p>12 working?</p> <p>13 A. Yeah, I came to the office lying down in</p> <p>14 a special car, and I think I stood most of the</p> <p>15 meeting with Dennis Dimon.</p> <p>16 Q. In 1983, what was the mailing address for</p> <p>17 Latti Associates?</p> <p>18 A. I would say 30-31 Union Wharf, Boston.</p> <p>19 Q. During that period of time, do you recall</p> <p>20 if anything would have alerted you to a problem</p> <p>21 with receiving mail at Latti Associates?</p> <p>22 A. In what month?</p> <p>23 Q. In 1983?</p> <p>24 A. I don't know whether it was '83. We</p>	<p style="text-align: right;">35</p> <p>1 himself was responsible for the docketing.</p> <p>2 Q. What about mail that didn't contain a</p> <p>3 hearing date or some response due date, general</p> <p>4 correspondence about a case?</p> <p>5 A. That was not docketed.</p> <p>6 Q. Okay, and when that mail came in, what</p> <p>7 happened to it once it came into the door at Latti</p> <p>8 Associates?</p> <p>9 A. Once a letter or mail came to Latti</p> <p>10 Associates, we had -- in what year because it</p> <p>11 varied?</p> <p>12 Q. 1982, 1983, that time period.</p> <p>13 A. '82 and '83, my recollection is that the</p> <p>14 office manager, Cathy Foster, slitted the mail,</p> <p>15 and she would call Donna Tempesta, the secretary,</p> <p>16 to go through the mail with her. Donna would</p> <p>17 assist Cathy Foster in the mail. She was a legal</p> <p>18 secretary, she understood docketing.</p> <p>19 She knew time periods, she knew dates,</p> <p>20 Cathy Foster did not. The mail was opened or</p> <p>21 slitted as I called it, and it was then put in</p> <p>22 different folders according to the initials of the</p> <p>23 lawyers. Each folder had the initial of the</p> <p>24 attorney.</p>
<p style="text-align: right;">33</p> <p>1 moved from 95 Commercial Wharf I believe in '82,</p> <p>2 and we had a problem with the mail. We put in</p> <p>3 cards of transfer of address with the post office.</p> <p>4 We failed to get certain notification of hearings</p> <p>5 and trials in the Federal Court.</p> <p>6 We showed that we never got at the time</p> <p>7 the notification. We had a means of docketing the</p> <p>8 mail and what was received, and that was vacant,</p> <p>9 so, we never got certain hearings and trial dates,</p> <p>10 and we never appeared and we were defaulted.</p> <p>11 By showing that, that we never got</p> <p>12 notice, they were removed, the defaults, and</p> <p>13 restored. That was during '82, and I don't</p> <p>14 remember if it was also '83.</p> <p>15 Q. And was the reason you didn't get notice</p> <p>16 that they mailed it to your old address instead of</p> <p>17 your current address?</p> <p>18 A. It came back to the center. I do not</p> <p>19 remember whether they were addressed to 30-31 that</p> <p>20 we received it or it was addressed to 95</p> <p>21 Commercial Wharf, I don't remember.</p> <p>22 We showed we never got mail in the</p> <p>23 Federal Court and because, I'm not sure, I don't</p> <p>24 remember and I remember we tried to clear it up</p>	<p style="text-align: right;">36</p> <p>1 If Donna or Cathy was not certain who was</p> <p>2 handling the mail, excuse me, the file that it</p> <p>3 pertained to, they would look in a docket card and</p> <p>4 that would have the initials of the lawyer that</p> <p>5 was handling the particular file.</p> <p>6 The mail was then slotted into the</p> <p>7 different folders. If it was addressed to a</p> <p>8 lawyer, mail, that lawyer probably would get it</p> <p>9 unless they were certain that it was being</p> <p>10 processed by somebody else even though the letter</p> <p>11 was addressed to an individual.</p> <p>12 Most of the time it went with the</p> <p>13 individual that was handling the file. The mail</p> <p>14 was docketed by Donna, checks were retained by the</p> <p>15 office manager, a copy of the check was given to</p> <p>16 the attorney who settled the case so he would know</p> <p>17 that the check was received and the money was</p> <p>18 received, and the original check would go to Cathy</p> <p>19 Foster, and she would deposit that check in the</p> <p>20 bank, and the mail was then, after it was docketed</p> <p>21 by Donna, it was then distributed to the different</p> <p>22 lawyers.</p> <p>23 Sometimes Donna would distribute,</p> <p>24 sometimes the lawyer would pick up his mail, but</p>
<p style="text-align: right;">34</p> <p>1 and it still occurred and it had stopped in '82 or</p> <p>2 stopped in '83.</p> <p>3 Q. And in answering that question, you</p> <p>4 referred to docketing the mail?</p> <p>5 A. We had a system that the mail was</p> <p>6 docketed.</p> <p>7 Q. And what does that mean?</p> <p>8 A. Every piece of mail we get, we have a</p> <p>9 different, we had a book that showed that we</p> <p>10 received such and such, that we received a letter</p> <p>11 or something like that.</p> <p>12 Q. Okay, and that was every piece of mail</p> <p>13 that came into the firm?</p> <p>14 A. Not every piece of mail, most of the</p> <p>15 mail.</p> <p>16 Q. Okay. What mail was docketed?</p> <p>17 A. I think court appearances and that type</p> <p>18 of thing was docketed on to a diary, into a book</p> <p>19 of trials, of hearings, and things like that that</p> <p>20 we had, and there was a check mark put on the</p> <p>21 piece of mail so the lawyer would know that it was</p> <p>22 docketed, and he would not only, so, we, when the</p> <p>23 mail came in, we had docketed certain things like</p> <p>24 hearings and things like that and the lawyer</p>	<p style="text-align: right;">37</p> <p>1 if the lawyer hadn't picked up after they did the</p> <p>2 mail, it would be distributed.</p> <p>3 Q. Where did your participation in this</p> <p>4 process fit in, did you review mail that was for</p> <p>5 everyone or just for yourself?</p> <p>6 A. First of all, in '82 you're asking, '83?</p> <p>7 Q. Yes.</p> <p>8 A. Okay, I'm assuming '82 and '83 is your</p> <p>9 question, Roger Hughes looked at the mail from</p> <p>10 approximately the end of '82 into '83. A great</p> <p>11 deal of time I was on trial in '82 and '83, we</p> <p>12 tried numerous cases. There were not rules of</p> <p>13 court that precipitated settlement such as</p> <p>14 discovery as today.</p> <p>15 So, when I was out, when I was on trial,</p> <p>16 which was constant, Roger Hughes would review the</p> <p>17 mail and then it would be passed out, so, before</p> <p>18 it was passed out to each individual, Roger Hughes</p> <p>19 or myself would look at the mail but mostly Roger</p> <p>20 Hughes.</p> <p>21 When he became a partner in March of '83,</p> <p>22 he constantly reviewed the mail. That was his</p> <p>23 job, and I would look at the mail occasionally.</p> <p>24 It was reviewed only for defaults and trouble,</p>

<p style="text-align: right;">38</p> <p>1 troublesome mail that Roger Hughes felt or I felt 2 was troublesome, and then we would talk to the 3 attorney, "Why haven't you answered 4 interrogatories yet? Why haven't you taken a 5 deposition?" or "Maybe you should take an expert" 6 and that type of thing. 7 Q. During this early 1983 period, after 8 March of 1983, Mr. Hughes was a partner -- 9 A. Yes. 10 Q. -- at Latti Associates? And when did 11 that partnership end? 12 A. In September of '84. 13 Q. And why did it end? 14 A. Because Roger Hughes at the time did not, 15 at the time he failed to live up to partnership 16 material as far as leadership and as far as work 17 ethic, and by agreement, it was best that he left 18 as a partner, and he left in as I said, September 19 of '84, or well, he probably left the first few 20 days of October. 21 Q. Of October 1984? 22 A. '84, yeah, either the end of September or 23 the beginning of October of '84. 24 Q. Was that amicable?</p>	<p style="text-align: right;">41</p> <p>1 Q. After October of 1984, did you have any 2 other partners after that point? 3 A. Yes. 4 Q. And who were they? 5 A. William Grissot. 6 Q. Anyone else? 7 A. I already alluded to my son-in-law and 8 daughter, I don't remember any others. 9 Q. How long was Mr. Grissot a partner? 10 A. Two years maybe, maybe three. 11 Q. And was Mr. Grissot a full partner or a 12 limited partner? 13 A. He was a full partner. 14 Q. Okay, and what was the percentage that he 15 received from the profits? 16 A. I don't remember. 17 Q. Was it 50 percent? 18 A. I don't remember. 19 Q. And why did your partnership with 20 Mr. Grissot end? 21 A. I believe that Bill really wanted to go 22 on his own, which he is today, and he left around 23 '92, I'd say '92, and he has a general practice, 24 corporate, and he does mediation and stuff like</p>
<p style="text-align: right;">39</p> <p>1 A. I thought it was until he sued me, I 2 thought it was until he sued me. 3 Q. Okay. He sued you? 4 A. He sued me. 5 Q. Okay, and what did he sue you for? 6 A. For his interest in the cases, which was 7 15 percent in the existing cases, and if I 8 remember correctly, he wanted, his attorney wanted 9 an accounting. 10 Q. Did he either get compensated 15 percent 11 and/or an accounting? 12 A. The cases never got that far. 13 Q. Okay. 14 A. In other words, his lawsuit claimed an 15 interest in the case, we countered ourselves with 16 a lawsuit that was never filed, we countered with 17 a lawsuit that was never filed. 18 Q. We being Latti Associates? 19 A. Latti Associates. 20 Q. And you're positive no lawsuit was filed 21 by Latti Associates or yourself individually 22 against Mr. Hughes? 23 A. They were, or Roger Hughes was served, 24 and Owen Todd represented me at that time, and he</p>	<p style="text-align: right;">42</p> <p>1 that. He was an excellent trial lawyer. 2 Q. Okay. 3 MR. LeBLANC: Can we take a quick 4 break? 5 MR. DeWICK: Yes. 6 (A short break was taken.) 7 BY MR. LeBLANC: 8 Q. Mr. Latti, do you remember who were the 9 parties involved in the <u>Dimon vs. Jenny C.</u> case? 10 A. I don't understand your question. 11 Q. Do you remember who the parties in the 12 <u>Dimon vs. Jenny C.</u> case were? 13 A. I don't know what you mean by parties. 14 Q. Well, what would you define a party as to 15 a case? 16 A. A party to a case, the people that were 17 involved in the case. 18 Q. Okay. Who was involved in the <u>Dimon vs.</u> 19 <u>Jenny C.</u> case? 20 A. Dennis Dimon and the boat, I don't 21 remember the boat's name. 22 Q. Okay. 23 A. It was the corporation probably. 24 Q. Do you recall if any other person was</p>
<p style="text-align: right;">40</p> <p>1 gave Hughes through his attorney a day certain 2 that he was going to enter the complaint, and 3 Roger Hughes' attorney called that day, it was 4 Good Friday, I remember it, to say that Roger 5 Hughes was dropping the lawsuit if we would not 6 enter the lawsuit. 7 The lawsuit consisted of solicitation of 8 clients and things that he had done since the 9 dissolution. We had affidavits that were taken by 10 a former FBI man in the file of people that he had 11 completely solicited after he left, and the suit 12 was terminated by general releases and neither 13 party prevailed. 14 He signed a release and I signed a 15 release also with respect to the things that he 16 had done. 17 Q. And do you know what court Mr. Hughes' 18 complaint was filed in? 19 A. No. 20 Q. Do you know if it was federal or state? 21 A. No, I don't remember. 22 Q. Was that suit against Latti Associates or 23 yourself individually? 24 A. I don't remember.</p>	<p style="text-align: right;">43</p> <p>1 involved or entity was involved in that case? 2 A. As a plaintiff sued the boat owner, which 3 was the corporation, that's to me who was involved 4 in the case. 5 Q. Do you know if Charter Security was a 6 party to -- 7 A. No. 8 Q. Let me finish the question, please. Do 9 you know if Charter Security was a party in the 10 <u>Dimon vs. Jenny C.</u> case? 11 A. Charter Security was not. 12 Q. They were not a party? 13 A. Were not a party. 14 Q. Do you know if Kemper Insurance Company 15 was a party? 16 A. They were not a party. 17 MR. LeBLANC: For the record, I'm 18 going to hand everyone a copy of what was marked 19 as Exhibit 25 to Mr. Hughes' deposition. Can you 20 mark that document as Exhibit 1, please. 21 (Exhibit No. 1, Settlement Sheet, 22 marked for identification.) 23 BY MR. LeBLANC: 24 Q. For the record, Mr. Latti, I'm going to</p>

<p style="text-align: right;">44</p> <p>1 hand you a document that we've marked as Exhibit 1 2 titled "Settlement sheet," and the case identified 3 on the settlement sheet is <u>Dimon vs. Jenny C.</u> 4 <u>Corporation</u> and a settlement date of 4/19/1983. 5 Can you look at that document, Mr. Latti? 6 A. Okay, I've looked at it. 7 Q. Do you know what that document is? 8 A. It's a settlement sheet from, it looks 9 like from our office. 10 Q. Okay, and when you say our office, you 11 mean Latti Associates? 12 A. Latti Associates. 13 Q. Okay, and what was the purpose of this 14 document? 15 A. To determine out of a settlement what the 16 client gets net, what he gets clear, and to be 17 given to the client at the time if he requests it. 18 Q. Is there any other purpose for creating a 19 document like this? 20 A. It's standard procedure that we use a 21 settlement sheet for each case that was disposed 22 of, either a trial or settlement. 23 Q. Do you see the third line from the top 24 where it says "Submitted by BEH/MBL"?</p>	<p style="text-align: right;">47</p> <p>1 prepare a settlement sheet like this? 2 A. It was the attorney who actually was 3 responsible for the case as well as Cathy Foster 4 and the office manager. She handled the 5 accounting on the finances of the office. 6 Q. Okay, and in the <u>Dimon vs. Jenny C.</u> 7 <u>Corporation</u> case, what did you do on that case in 8 terms of work on the case? 9 A. I don't remember except what I've told 10 you. 11 Q. Okay. Did your name appear on every 12 single settlement sheet for Latti Associates? 13 A. No, no, but I was responsible in a sense 14 for keeping Dimon with Latti Associates because I 15 talked to him and he agreed to stay with us, and I 16 was also responsible in a sense for talking to him 17 about the settlement. 18 So, I had input into the Dimon case, so, 19 my initials would appear. I don't know 20 whether -- strike that. That answers your 21 question I think. 22 Q. Now, in terms of your meetings with 23 Mr. Dimon in April of 1983 when you convinced him 24 to stay with Latti Associates, what did you say to</p>
<p style="text-align: right;">45</p> <p>1 A. Yeah. 2 Q. And what do those initials mean? 3 A. That means that the person that had input 4 into the case. 5 Q. And what does having input into the case 6 mean? 7 A. It means either that they or the 8 individual who was responsible for getting the 9 case or processing the case, and it was used by 10 myself and also my partners in determining the 11 input that the person had in the case at the time 12 that he was issued a bonus. 13 So, if I worked on the case some, I put 14 my initials on it, my initials would go on it, and 15 if Roger Hughes worked on the case at some point, 16 his initials would go on it. 17 Q. Okay. Would -- I'm sorry. 18 A. Go ahead. 19 Q. Was it possible that an attorney who 20 worked on the case didn't have their initials or 21 wouldn't have their initials on the submitted by? 22 A. Well, Joe Flannery's are not on there and 23 he tried the case, so, it was possible. 24 Q. And why did Mr. Flannery's initials not</p>	<p style="text-align: right;">48</p> <p>1 convince him to stay with Latti Associates? 2 A. I don't remember, I don't remember. 3 Q. Okay. 4 A. I, I don't remember. 5 Q. Okay. Is it possible that you said 6 "We're going to do a good job for you, we'll 7 continue to handle your case," those kind of 8 things? 9 A. Is it possible? Sure, it's possible, 10 yeah. 11 Q. Is it probable that that's what you told 12 him? 13 A. I don't know, I don't remember what I 14 told him in order to, for him to stay with the 15 firm and not go with Joseph Flannery. 16 There was a question of whether since Joe 17 tried the case, whether he would go with Flannery 18 or he had retained the firm in a sense, and I 19 really don't remember, but he felt that, he stayed 20 with us, so, he must have felt the firm was 21 important and not the individual. 22 Q. Okay. So, in terms of your meetings in 23 April of 1983, you had some conversations with 24 Mr. Dimon, and the end result was that he decided</p>
<p style="text-align: right;">46</p> <p>1 appear on this sheet? 2 A. Because he's no longer with Latti 3 Associates at the time of the, it looks like the 4 date of settlement was 4/19/83. 5 Q. Okay. So, even though Mr. Flannery had 6 taken the case to trial and tried the case and 7 left shortly after trial, he wouldn't receive a 8 portion of the credit for this case? 9 A. It was used for the purposes of bonuses, 10 so, Flannery would not get a bonus as he was no 11 longer with Latti Associates, he was on his own. 12 Q. Okay, and if you look down to the line 13 that says "Attorneys fees." 14 A. Okay. 15 Q. In parentheses it says "SB," what does 16 that stand for? 17 A. I don't know, SB, that I don't know. No, 18 it would only be a guess. That, it looks like 19 Dimon wanted \$100,000 clear, I don't remember 20 though, but looking at the settlement sheet, and 21 in order to do that, we had to reduce the fee to 22 \$141,485.47 instead of \$141,666.66. That's 23 probably subtract, SB, I'm really guessing. 24 Q. Okay, and whose responsibility was it to</p>	<p style="text-align: right;">49</p> <p>1 to stay with you rather than go with Mr. Flannery? 2 A. Right. 3 Q. And when I say you, I mean Latti 4 Associates? 5 A. Right, I understand that. 6 Q. Okay. In terms of your representation of 7 Mr. Dimon, what do you consider or what do you 8 understand it to be an attorney's representation 9 of a client? 10 MR. DeWICK: Objection. 11 THE WITNESS: Go ahead? 12 MR. DeWICK: You can answer. 13 BY MR. LeBLANC: 14 A. You mean Latti Associates? 15 Q. Yes. 16 A. What do I understand to represent him? 17 To get him the most money possible and to 18 compensate him for his injuries, and that's our 19 job, to get the highest award or settlement 20 possible based on the facts of the case. 21 Q. Okay. Is it also your job to protect a 22 client's interest? 23 MR. DeWICK: Objection. 24</p>

<p>50</p> <p>1 BY MR. LeBLANC:</p> <p>2 A. Is that one of our jobs or</p> <p>3 responsibilities, sure.</p> <p>4 Q. Okay, and what do you understand it to</p> <p>5 mean to protect a client's interest?</p> <p>6 A. As I said, to, to protect his interests,</p> <p>7 to see that he's fairly compensated for his</p> <p>8 injuries depending if it's a personal injury case.</p> <p>9 If it's a business, then to prevail and do the</p> <p>10 best that's possible for your client.</p> <p>11 Q. Okay, and when does the attorney client</p> <p>12 relationship or representation begin in your</p> <p>13 opinion?</p> <p>14 MR. DeWICK: Objection.</p> <p>15 BY MR. LeBLANC:</p> <p>16 A. That's hard to stay. I think most of the</p> <p>17 time the attorney client relationship begins with</p> <p>18 the signing of a contingent agreement where he</p> <p>19 signs that we represent him and he will pay X</p> <p>20 number of dollars as a fee, I think that's</p> <p>21 probably the beginning of an attorney relationship</p> <p>22 and client.</p> <p>23 Q. Okay, and when does that end?</p> <p>24 MR. DeWICK: Objection.</p>	<p>53</p> <p>1 A. Not a personal practice, no.</p> <p>2 Q. Was there a practice, a firm practice at</p> <p>3 Latti Associates for keeping clients updated and</p> <p>4 informed about their cases?</p> <p>5 A. Only according to the rules that an</p> <p>6 attorney knew, ethics and conduct. There is, it</p> <p>7 was up to the individual to inform the client as</p> <p>8 to matters that were relevant and particularly of</p> <p>9 interest in the case itself.</p> <p>10 Q. And whose responsibility would it be to</p> <p>11 make the determination of whether or not a matter</p> <p>12 was relevant or of interest to the client?</p> <p>13 A. It would be a judgment call from the</p> <p>14 attorney, I never sat down with the attorneys and</p> <p>15 set forth rules or practices with respect to the</p> <p>16 client. He knows the ethics that he works under</p> <p>17 and what is expected of him.</p> <p>18 Q. Was it Latti Associates' practice for all</p> <p>19 the attorneys to sit down together and kind of go</p> <p>20 through the cases they had active?</p> <p>21 A. No, not the way you said it, but there is</p> <p>22 a meeting every Thursday night that a lawyer could</p> <p>23 bring up any problems that he had with the cases</p> <p>24 that he was handling, and we would discuss them as</p>
<p>51</p> <p>1 BY MR. LeBLANC:</p> <p>2 A. That again is very hard to say. It</p> <p>3 depends on the circumstances and the facts of a</p> <p>4 case, but I think in most cases, it ends when</p> <p>5 there is a settlement or a trial and the case is</p> <p>6 finally disposed of, and when he receives his</p> <p>7 money, that's when to me the attorney client</p> <p>8 relationship would end when the case is disposed</p> <p>9 of, if it's in court when the case is terminated,</p> <p>10 and that's when the attorney client relationship</p> <p>11 ends.</p> <p>12 Q. Earlier we were talking about mail</p> <p>13 docketing and mail distributing in the firm.</p> <p>14 A. Yeah.</p> <p>15 Q. Post settlement, was it the practice of</p> <p>16 Latti Associates to continue to distribute mail</p> <p>17 that an attorney got on a case that had already</p> <p>18 been settled?</p> <p>19 A. Yes, because he, there would still appear</p> <p>20 a docket card, and if it was addressed to the</p> <p>21 individual, that mail would go to that individual,</p> <p>22 but again, as I testified, if they knew it was</p> <p>23 being handled by somebody else, that mail would go</p> <p>24 to that individual that was responsible for that</p>	<p>54</p> <p>1 a group which was about ten or eleven lawyers at</p> <p>2 the time.</p> <p>3 Q. Okay, but there was no formal organized</p> <p>4 system for review of particular cases on a case by</p> <p>5 case basis throughout the office?</p> <p>6 A. They would not be reviewed by me, it was</p> <p>7 up to the attorney who was responsible for the</p> <p>8 file to come to the, to Latti Associates or me</p> <p>9 with respect to the problems.</p> <p>10 Q. And if you became aware of any problem as</p> <p>11 a partner at Latti Associates, what would be your</p> <p>12 responsibility?</p> <p>13 MR. DeWICK: Objection.</p> <p>14 BY MR. LeBLANC:</p> <p>15 A. If I became aware of a problem with a</p> <p>16 partner, what would I do?</p> <p>17 Q. If you became aware of a problem with a</p> <p>18 case handled by Latti Associates, what would you</p> <p>19 do?</p> <p>20 MR. DeWICK: Objection.</p> <p>21 BY MR. LeBLANC:</p> <p>22 A. I would sit down with that lawyer and</p> <p>23 discuss it with him.</p> <p>24 Q. At any time in that 1983 period, did you</p>
<p>52</p> <p>1 file or that case, whether it was pre or post or</p> <p>2 whatever it was verdict or settlement.</p> <p>3 Q. Okay, and what was Latti Associates'</p> <p>4 practice with regard to withdrawing or terminating</p> <p>5 their attorney of record status on a particular</p> <p>6 case after the case was ended?</p> <p>7 A. The --</p> <p>8 MR. DeWICK: Objection.</p> <p>9 THE WITNESS: Excuse me.</p> <p>10 BY MR. LeBLANC:</p> <p>11 A. The file was probably closed and stored,</p> <p>12 and sometimes the court required, depending on the</p> <p>13 case, it really varied. Depending on the case, we</p> <p>14 would file papers closing the case out. If it was</p> <p>15 a court ordered settlement, a compensation case,</p> <p>16 when it was approved by the court, we would close</p> <p>17 the file, and we wouldn't file any papers because</p> <p>18 there would be approval by the judge, and again,</p> <p>19 this refers only to a personal injury accident,</p> <p>20 and we handled different types of cases.</p> <p>21 Q. What was, and I'll ask you this question</p> <p>22 in kind of two parts, did you have a personal</p> <p>23 practice with regard to keeping your clients</p> <p>24 informed and updated on their case's status?</p>	<p>55</p> <p>1 become aware that there was a dispute regarding</p> <p>2 the settlement in the Dimon case?</p> <p>3 MR. DeWICK: Objection.</p> <p>4 BY MR. LeBLANC:</p> <p>5 A. I have no memory of that whatsoever.</p> <p>6 Q. Okay. So, when you say you have no</p> <p>7 memory, you're not saying it never happened, just</p> <p>8 you don't recall one way or the other?</p> <p>9 A. I have, I was never consulted nor did I</p> <p>10 learn about any dispute between any insurance</p> <p>11 companies that insured the vessel or took out an</p> <p>12 annuity. I had no knowledge of that.</p> <p>13 Q. And if you had knowledge of that, what</p> <p>14 would be your responsibility to the client?</p> <p>15 MR. DeWICK: Objection.</p> <p>16 BY MR. LeBLANC:</p> <p>17 A. That's difficult to say. What would I do</p> <p>18 if I became aware that there was a dispute after</p> <p>19 there was a settlement is your question?</p> <p>20 MR. LeBLANC: We can have the court</p> <p>21 reporter read the question back.</p> <p>22 (Last question read back by the court</p> <p>23 reporter.)</p> <p>24</p>

<p style="text-align: right;">56</p> <p>1 THE WITNESS: Excuse me, it's not as 2 to what period, what time? That's my question. 3 MR. LeBLANC: Let's have the court 4 reporter read the question back. 5 (Last question read back by the court 6 reporter.) 7 BY MR. LeBLANC: 8 A. Knowledge of what? 9 Q. The prior question was knowledge of a 10 dispute regarding a settlement after the 11 settlement was entered into, what would be your 12 responsibility to the client? 13 MR. DeWICK: Objection. 14 BY MR. LeBLANC: 15 A. It would depend on the circumstances 16 of -- you have to give me more facts in your 17 hypothetical that you've asked. It would depend 18 whether I would speak to the client, whether I 19 would take the information and do something. 20 It depends on the defense that was 21 involved or the settlement, what the dispute was, 22 what was the defense of the two companies 23 fighting, one or the other, it would depend what 24 the dispute was about, it would depend on how long</p>	<p style="text-align: right;">59</p> <p>1 negotiated it. That was part of Dimon's contract 2 with them. 3 So, to me, Dimon always has that action 4 for enforcement of settlement against Kemper. The 5 thing that I would consider in Dimon also, 6 although there is no obligation or duty to do it, 7 to speak to him is anticipatory breach, the 8 defense of anticipatory breach. 9 We, or no attorney if we received these 10 letters could file suit. He wasn't hurt. To file 11 suit before the time was up, and the time wasn't 12 up for twenty years, he couldn't bring suit, an 13 attorney could not bring a lawsuit. 14 The excuse that Metropolitan uses a 15 typographical error, how can there be a 16 typographical error, and there are occasions on 17 typographical errors when one talks of more than 18 twenty years or just he's going to get it for 19 life. 20 That's so significant, the terms of life 21 and certain for twenty years or no more than 22 twenty years. That's no typographical error. 23 So, it's a weak defense, it's a real 24 thing. The dispute is between two companies,</p>
<p style="text-align: right;">57</p> <p>1 a dispute, whether I could do anything, it would 2 depend on many factors what I would do depending 3 on the facts and the situation in question. 4 Q. Okay. In the facts of the <u>Dimon vs.</u> 5 <u>Jenny C.</u> case where there was a settlement 6 reached, the terms of the settlement in terms of 7 the annuity paid to Mr. Dimon was disputed, what 8 would be your responsibility in those 9 circumstances? 10 MR. DeWICK: Objection. 11 BY MR. LeBLANC: 12 A. What would I do, in other words, right? 13 Q. What would be your responsibility to the 14 client? 15 MR. DeWICK: Objection. 16 BY MR. LeBLANC: 17 A. First of all, I have read the material 18 like I said, I have seen the exhibits, and I've 19 read the transcript of the hearing before Judge 20 Pettine, the chief judge in Rhode Island in the 21 Federal Court. 22 The dispute that arose over the annuity 23 was whether Dimon was entitled to twenty years or 24 was he entitled to payments for life more than</p>	<p style="text-align: right;">60</p> <p>1 Kemper and Metropolitan. Kemper guaranteed the 2 settlement, their gripe is against Metropolitan, 3 and Dimon should be, I say, entitled to go against 4 all of them, the broker, Metropolitan, and Kemper. 5 So, would I have told Dimon if I had 6 received the letters and knew there was a dispute? 7 On a practical basis, I think I would have told 8 Dimon something. 9 I either would have written him that 10 nothing can be done for twenty years, or I would 11 have said something to him orally, but the big 12 thing is there's nothing I could do even if I 13 received those letters, even if I learned that 14 there was a dispute because to me he has to wait 15 for twenty years. 16 Anticipatory breach is the defense, I 17 cannot sue, and then in twenty years, he has the 18 same rights as he had at the start. 19 He isn't prejudiced in any way, he has 20 just as many rights, he has the same rights today 21 as he has then, and I, I really question whether 22 the attorney client relationship still exists. 23 Did it terminate when Pettine, the chief judge, 24 said I approve the settlement and the guardian</p>
<p style="text-align: right;">58</p> <p>1 twenty years, that was the dispute. 2 Metropolitan said that it was a mistake, 3 a typographical mistake, they say that to Dimon, 4 they say that it was a unilateral. To me as a 5 lawyer, legally trained, it was a unilateral 6 mistake, which is no defense whatsoever. 7 They cannot avoid the original policy, 8 and these are things that I would consider in 9 whether I would tell Dimon. I don't believe that 10 there is an obligation or duty to tell the client, 11 but in all likelihood, in the Dimon case I would 12 say something to him if, assuming I received the 13 letters and assuming that the dispute arose where 14 they weren't going to pay after twenty years. 15 Kemper is the insurance company for the 16 vessel, they agreed to pay Dimon for life. They 17 settled the case on this basis, Kemper. They said 18 that they would pay Dimon for life which was 19 approved by Pettine, the chief judge, from what I 20 read, and not only that, Pettine appointed a 21 guardian, so, he had a guardian, there was a 22 hearing. 23 Kemper knew that they were responsible to 24 pay him for life, and they knew it and they</p>	<p style="text-align: right;">61</p> <p>1 told the reasons why and Pettine approved it. 2 I think it's a different matter, but I 3 still, in a practical sense, I would speak to the 4 client, I would say something to him or write to 5 him, and I'd tell him to wait for twenty years and 6 do what he did. 7 At the time I did not know I was going to 8 retire in '99, but the firm continued on, and in 9 the sense that there were different participants 10 from what I've read and looked at, Dimon contacted 11 the firm, and then he went elsewhere. 12 Q. So, in summary, your position is you had 13 no responsibility and no duty but you would have 14 done something anyway? 15 MR. DeWICK: Objection. 16 BY MR. LeBLANC: 17 A. I don't say that, my testimony stands as 18 it is. I did not say that. 19 Q. Was your testimony, and we can have it 20 read back, just that you had no duty and no 21 responsibility? 22 A. I, I -- 23 MR. DeWICK: Objection. 24</p>

<p style="text-align: right;">62</p> <p>1 BY MR. LeBLANC: 2 A. -- I cannot answer that question, I did 3 not say that. I said there was no obligation, and 4 there is no duty to tell Dimon according to the 5 law, but on a practical basis, I would have told 6 Dimon, and that's what I testified. 7 Q. But without any duty and without any 8 obligation; is that right? 9 A. Right, I said that. 10 Q. Okay. 11 MR. LeBLANC: Can you mark this as 12 Exhibit 2, please. 13 (Exhibit No. 2, Pages 153-155 of 14 Dennis Dimon's Deposition, marked for 15 identification.) 16 MR. LeBLANC: For the record, I've 17 asked that Exhibit 2 be marked, it's pages 153, 18 154, and 155 of Dennis Dimon's deposition. 19 MR. DeWICK: Could I just ask that 20 the witness see the marked copy, please? 21 MR. LeBLANC: Oh, sure, absolutely, 22 I'm sorry. 23 BY MR. LeBLANC: 24 A. Okay, I've read page 153 through 155 in</p>	<p style="text-align: right;">65</p> <p>1 existence that would help you recall? 2 A. No, no, no. 3 Q. Okay. 4 MR. LeBLANC: Could you mark this as 5 Exhibit 3, please. 6 (Exhibit No. 3, Fax dated 6/12/03, 7 marked for identification.) 8 BY MR. LeBLANC: 9 Q. Mr. Latti, could you take a look at that, 10 please. 11 A. Okay. 12 Q. Mr. Latti, have you ever seen this 13 document before? 14 MR. GOLDEN: What document are you 15 referring to? 16 MR. LeBLANC: I'm sorry, for the 17 record, we've marked Exhibit 15 from Dennis 18 Dimon's deposition as Exhibit 3 for Mr. Latti's 19 deposition. 20 MR. GOLDEN: Thank you. 21 MR. LeBLANC: It consists of four 22 pages with a fax cover sheet as the first page. 23 BY MR. LeBLANC: 24 A. Have I ever seen -- there are four</p>
<p style="text-align: right;">63</p> <p>1 Exhibit 2. 2 Q. Thank you. Do you have any reason to 3 dispute that Mr. Dimon's annuity payments started 4 in May or June of 1983? 5 A. I have read that, I'm not sure that they 6 started in May. I read the transcript of the 7 hearing before Pettine, that was either the 3rd or 8 4th of May. 9 I don't know whether he received a 10 payment in May. I think he received it in June 11 and July and continued, but I don't think he 12 received it in May from reading the transcript and 13 looking at the different documents. 14 Q. Okay. Let's assume for purposes of these 15 questions that he started receiving his payments 16 in June of 1983. 17 A. Okay. 18 Q. Do you have any reason to dispute that 19 approximately one year later, he had an 20 interruption in his payments? 21 A. I don't know, I don't know that. I don't 22 remember that at all. 23 Q. Okay. Do you have any reason to dispute 24 or any reason to dispute that he contacted Latti</p>	<p style="text-align: right;">66</p> <p>1 documents and you said document. 2 Q. Right, have you ever seen these four 3 pages together as a document? 4 A. I don't remember if I've seen them 5 together, but I've seen them. 6 Q. Okay, and on the first page, it says to 7 Carolyn Latti. 8 A. Right. 9 Q. Do you know a Carolyn Latti? 10 A. The Latti is spelled incorrectly, there 11 is no E on Latti, Carolyn is my daughter. 12 Q. Okay, and do you know if the 13 (617) 523-7394 is the fax number for Latti & 14 Anderson? 15 A. Yes. 16 Q. And if you turn to that second page, a 17 letter dated June 9th, 2003 to Dennis Dimon from 18 Sandy Franklin, have you ever seen that document 19 before? 20 A. Yes. 21 Q. Okay, and when did you see it? 22 A. I think that document was forwarded to me 23 I'd say in February '05, February or March of '05, 24 but I'm not sure, but I have seen this document I</p>
<p style="text-align: right;">64</p> <p>1 Associates roughly in June of 1984 to discuss this 2 interruption in his payments? 3 A. I have no recollection of him contacting 4 Latti Associates or memory of him doing what it 5 says in Exhibit 2 that he did. 6 Q. Okay, and do you have any recollection of 7 whether or not Latti & Associates, Latti 8 Associates offered him assistance with continuing 9 the stream of payments at that time? 10 A. I have no memory of that. 11 Q. No reason to dispute that that's in fact 12 what happened? 13 A. I have no memory, I don't know if he did 14 or he didn't, I just don't know. 15 Q. Okay. 16 A. He never contacted me, that's the only 17 thing I can say. 18 Q. And just to make sure I have it right, 19 your testimony is that you only recall ever 20 speaking with Mr. Dimon two times? 21 A. I only remember two times that I spoke 22 with him. I could have spoken with him more than 23 that, but I don't know, I don't remember. 24 Q. Are there any written records that are in</p>	<p style="text-align: right;">67</p> <p>1 think. 2 Q. And who forwarded the document to you in 3 February or March of '05? 4 A. Carolyn Latti. 5 Q. Okay. 6 A. Yeah, I think in February '05. 7 Q. Okay, and when we're referring to this 8 document in this circumstance, we're talking about 9 Exhibit 3, page 2; is that correct? 10 A. Exhibit 3, page 2, yes. 11 Q. Okay. How about Exhibit 3, page 3? 12 A. I think that was forwarded to me also by 13 Carolyn Latti in February '05. 14 Q. Okay, and how about Exhibit 3, page 4? 15 A. I think that was forwarded also in 16 February '05. 17 Q. So, taking Exhibit 3 as a whole, only the 18 last three pages were forwarded to you? 19 A. I think all of them were forwarded to me 20 in February '05 was the first time I saw them. 21 Q. Okay. When was the first time you 22 discussed them with anyone? 23 A. Discussed? 24 Q. Discussed these documents with anyone?</p>

<p style="text-align: right;">68</p> <p>1 A. I didn't say that I discussed them. 2 Q. Did you discuss them with anyone? 3 A. I don't think so. Well, excuse me, I 4 did, I received, Latti Associates, Latti 5 Associates I think received a letter from Kaplan 6 is my memory, David B. Kaplan in February of '05. 7 That precipitated, I think he wrote a 8 letter also that was sent to 30-31 Union Wharf 9 which was forwarded to me. That's when I received 10 these documents that you refer to as Exhibit 3, 11 and I discussed these documents with Kaplan. 12 That was the first time that I was aware 13 that there was a problem. 14 Q. Okay. Do you see where these documents 15 are dated 6/12/03? 16 A. Yeah. 17 Q. Or at least the cover sheet is dated 18 6/12/03? 19 A. Yeah. 20 Q. And if you look at the top, the fax 21 legend is dated June 12th, 2003, 8:50, do you see 22 where it says that? 23 A. Yeah, yeah. 24 Q. Okay. So, did you ever discuss with</p>	<p style="text-align: right;">71</p> <p>1 by somebody with an initial. 2 Q. Okay. Do you know what this document is, 3 this page 3 of Exhibit 3? 4 A. Only from what I've learned from 5 reviewing the documents in this case, that 6 somebody, and I think it was Roger Hughes, 7 contacted Dean Witter and got a proposal from them 8 as to the annuity that Dimon was going to, excuse 9 me, that Kemper was going to purchase. 10 That's as far as I know, and this sets 11 forth the terms of the proposal by Dean Witter. 12 Q. Mr. Latti, you testified earlier that you 13 believed Mr. Dimon was in the same position as he 14 was in 1983. Do you see him being in the same 15 position now after twenty plus years of time has 16 passed? 17 A. I don't -- 18 MR. DeWICK: Objection. 19 BY MR. LeBLANC: 20 A. I don't think Dimon is a factor, I think 21 it's what legal rights he has and whether in some 22 way they were prejudiced by the delay, and I don't 23 see any prejudice with respect to the suit against 24 Metropolitan, Kemper, and the broker, and again, I</p>
<p style="text-align: right;">69</p> <p>1 Carolyn Latti why she didn't send those documents 2 to you sooner, she waited over a year and a half? 3 MR. DeWICK: Objection. 4 BY MR. LeBLANC: 5 A. The only thing that she said to me was 6 that she had spoken to Dennis Dimon at that time, 7 I imagine she spoke to him on the phone or it 8 could have been his wife or his mother, but she 9 had spoken to the Dimon's, and she had no file and 10 no way of getting the contract. 11 She had no papers on it, and that's about 12 it that she told me, and she then kept what Dimon 13 sent her, which is Exhibit 3, and it was not until 14 I asked, "Well, what's the story on Dimon, do you 15 have anything?" She says, "No file, no nothing 16 that remains from twenty some odd years ago," and 17 she said, "I did get a fax from Dimon," and this 18 is Exhibit 3. That's it. 19 Q. Okay. When she forwarded this Exhibit 3 20 to you, was there any cover letter with that, a 21 fax cover or anything? 22 A. Not that I remember, no, not that I 23 remember. 24 Q. Do you recall how you received that</p>	<p style="text-align: right;">72</p> <p>1 stress that he was guaranteed by Kemper payments 2 for life which was approved by the chief federal 3 judge, and I read it was Mr. Decof who was a 4 guardian. 5 This guarantee means he is still entitled 6 to enforce that settlement against Kemper. 7 MR. GOLDEN: Objection. 8 BY MR. LeBLANC: 9 A. And I don't see how in any way that he 10 was prejudiced. 11 Q. Would you agree with me that your memory 12 was fresher in 1983 of the events regarding the 13 settlement than they are today? 14 MR. DeWICK: Objection. 15 BY MR. LeBLANC: 16 A. Would I in '83 have a better memory than 17 today, yes. 18 Q. Okay, and in your experience as a trial 19 lawyer over forty years, would you agree that the 20 passage of time doesn't necessarily or doesn't 21 generally help people's memories, particularly 22 where it's a twenty plus year passage? 23 A. It depends on the cases and the 24 circumstances. In Dimon, it is a paper trial in a</p>
<p style="text-align: right;">70</p> <p>1 document? 2 A. I think it was faxed, it could have been 3 mailed though, but I think it was faxed. 4 Q. Okay, and by 2003, you were already 5 living in Maine; is that correct? 6 A. Right. 7 Q. Okay. Did you come to Boston to conduct 8 business in 2003? 9 A. Did I come to conduct law practice 10 business? No, never. 11 Q. And you were still of counsel at Latti & 12 Anderson? 13 A. Yes, yeah. 14 Q. If you flip to page 3 of Exhibit 3, do 15 you know if any of the non typewritten marks on 16 this page were made by you? 17 A. That's not my writing, so, the answer is 18 they probably were not made by me, the notations 19 because that is not my writing. 20 Q. Okay. Do you know what the stamp on the 21 bottom right-hand corner of the document is, have 22 you ever seen a stamp like that? 23 A. No, I can't even read it, hardly, 24 something about an original copy, and it's signed</p>	<p style="text-align: right;">73</p> <p>1 sense, and the issues were laid out by the papers 2 and what occurred. 3 The issues are very narrow, so, time in 4 Dimon does not hurt this case or his causes of 5 actions against the different parties, and I 6 stress that he cannot bring a lawsuit against 7 until twenty years when he was hurt when they 8 stopped payment because if he brought a suit 9 before twenty years, there was the defense of 10 anticipatory breach, and that is a good defense, 11 and it is binding on Dimon as well as anyone. 12 Q. Wouldn't it be the case that twenty years 13 ago you would still have a file on the <u>Dimon vs.</u> 14 <u>Jenny C.</u> case? 15 A. I don't understand your question. 16 Q. In 1983, you would still have a complete 17 file on the <u>Dimon vs. Jenny C.</u> case at Latti 18 Associates? 19 A. Yes. 20 Q. And wouldn't you also expect that in 21 1983, Kemper Insurance Company would have a 22 complete file on an annuity that was less than a 23 year old at the time? 24 MR. GOLDEN: Objection.</p>

<p style="text-align: right;">74</p> <p>1 MR. DeWICK: Objection.</p> <p>2 BY MR. LeBLANC:</p> <p>3 A. Would I expect, I don't know, I don't</p> <p>4 know their practice or procedure at all, so, I</p> <p>5 can't answer that.</p> <p>6 Q. Okay. Would you be surprised if they</p> <p>7 didn't have a complete file?</p> <p>8 A. I don't know.</p> <p>9 MR. GOLDEN: Objection.</p> <p>10 BY MR. LeBLANC:</p> <p>11 A. I don't know.</p> <p>12 Q. And in your own experience over forty</p> <p>13 years of file keeping as an attorney, would you be</p> <p>14 surprised if a complete file was not kept by a</p> <p>15 party or a person involved in a case after just</p> <p>16 months after the case was over?</p> <p>17 A. I would be surprised, yeah.</p> <p>18 Q. Okay, and in fact, in your case, in the</p> <p>19 <u>Dimon vs. Jenny C.</u>, can you tell us when that file</p> <p>20 was destroyed?</p> <p>21 MR. DeWICK: Objection.</p> <p>22 BY MR. LeBLANC:</p> <p>23 A. I can't tell you when that file was</p> <p>24 destroyed, but we have a practice of keeping them</p>	<p style="text-align: right;">77</p> <p>1 MR. LeBLANC: Kevin, are you still</p> <p>2 with us?</p> <p>3 MR. GOLDEN: Yes, I'm here.</p> <p>4 MR. LeBLANC: Okay. For the record,</p> <p>5 I've asked that a document entitled "Annuity</p> <p>6 application" be marked as Exhibit 4.</p> <p>7 BY MR. LeBLANC:</p> <p>8 Q. Mr. Latti, could you take a look at that</p> <p>9 exhibit, please?</p> <p>10 A. Okay, I've looked at it.</p> <p>11 Q. Have you ever seen this document before?</p> <p>12 A. Yes.</p> <p>13 Q. And when did you see it?</p> <p>14 A. When I was sent the exhibits marked in a</p> <p>15 deposition or depositions around May, the</p> <p>16 beginning of May by my attorney.</p> <p>17 Q. Okay, and before then, have you ever seen</p> <p>18 it?</p> <p>19 A. No.</p> <p>20 Q. Okay. Do you know what this document is?</p> <p>21 A. It says annuity application, that's the</p> <p>22 only way I would know what it is. It looks like</p> <p>23 an annuity application at that time, yes, annuity</p> <p>24 application.</p>
<p style="text-align: right;">75</p> <p>1 for tax purposes for about six or eight years</p> <p>2 before a file is destroyed.</p> <p>3 Q. Okay. So, you don't have any reason to</p> <p>4 believe that the <u>Dimon vs. Jenny C.</u> file was</p> <p>5 destroyed any time before 1988, '89?</p> <p>6 A. I don't know, I don't know that. Of</p> <p>7 course I'm telling you our practice. It could</p> <p>8 have been destroyed before because of computers</p> <p>9 coming into being, and we were completely</p> <p>10 computerized, and we destroyed files earlier than</p> <p>11 six years.</p> <p>12 We put them on disks, some of them, it</p> <p>13 got out of control, the class actions and the</p> <p>14 multi districts with files galore at warehouse</p> <p>15 storage, and some of them were destroyed and some</p> <p>16 of them were put on disk. I don't know.</p> <p>17 Q. Okay. I'm sorry, go ahead.</p> <p>18 A. Yeah, that's it, I don't know.</p> <p>19 Q. In terms of the disks, that, the files</p> <p>20 that were put on disks, did you cause a search to</p> <p>21 be made of those disks for files related to the</p> <p>22 <u>Dimon vs. Jenny C.</u> case?</p> <p>23 A. Yes.</p> <p>24 Q. Okay, and what was the result of that</p>	<p style="text-align: right;">78</p> <p>1 Q. Do you have any reason to dispute</p> <p>2 Mr. Dimon's testimony that he signed this document</p> <p>3 in your office or in Latti Associates' offices?</p> <p>4 A. I don't know, I don't remember.</p> <p>5 Q. Did you present this document to</p> <p>6 Mr. Latti for his signature?</p> <p>7 A. I don't remember presenting this document</p> <p>8 to him at all.</p> <p>9 Q. Okay. Now, would a document like this be</p> <p>10 something that an attorney representing Mr. Dimon,</p> <p>11 something that they would review before he signed</p> <p>12 it?</p> <p>13 MR. DeWICK: Objection.</p> <p>14 BY MR. LeBLANC:</p> <p>15 A. I don't know that for a fact.</p> <p>16 Q. Okay, and do you have any knowledge</p> <p>17 whether or not someone from Latti Associates</p> <p>18 actually reviewed this document --</p> <p>19 A. I have no knowledge.</p> <p>20 Q. -- before he signed it?</p> <p>21 A. No memory, no knowledge of it at all.</p> <p>22 MR. LeBLANC: Can I have that back,</p> <p>23 sir.</p> <p>24 THE WITNESS: Yes.</p>
<p style="text-align: right;">76</p> <p>1 search?</p> <p>2 A. Zero.</p> <p>3 Q. Okay, and in terms of the files that are</p> <p>4 retained in a warehouse by Latti Associates or</p> <p>5 Latti & Anderson, did you cause a search to be</p> <p>6 made of those files?</p> <p>7 A. Yes.</p> <p>8 Q. And what was the result of that search?</p> <p>9 A. Nothing.</p> <p>10 Q. Okay. Other than the documents that you</p> <p>11 have disclosed or produced by, through your</p> <p>12 attorney, do you know of any other documents that</p> <p>13 exist related to the <u>Dimon vs. Jenny C.</u> case?</p> <p>14 A. No.</p> <p>15 Q. Any other documents related to Dennis</p> <p>16 Dimon in any way?</p> <p>17 A. No.</p> <p>18 MR. LeBLANC: Can you mark that as</p> <p>19 Exhibit 4, please.</p> <p>20 (Exhibit No. 4, Annuity Application,</p> <p>21 marked for identification.)</p> <p>22 MR. LeBLANC: Why don't we go off</p> <p>23 record, we're going to take a quick break.</p> <p>24 (A short break was taken.)</p>	<p style="text-align: right;">79</p> <p>1 MR. LeBLANC: Thank you. Can you</p> <p>2 mark that as 5, please.</p> <p>3 (Exhibit No. 5, Letter dated 8/12/83,</p> <p>4 marked for identification.)</p> <p>5 MR. LeBLANC: For the record, I've</p> <p>6 asked that a letter dated August 12th, 1983</p> <p>7 addressed to Mr. Robert Foley of Dean Witter</p> <p>8 Reynolds, Incorporated from John L. Noe of</p> <p>9 American Motorists be marked as Exhibit 5.</p> <p>10 BY MR. LeBLANC:</p> <p>11 Q. Mr. Latti, can you review that document,</p> <p>12 please?</p> <p>13 A. I'll read it, okay.</p> <p>14 Q. Have you had a chance to look at that</p> <p>15 document, sir?</p> <p>16 A. Yes.</p> <p>17 Q. And I notice you kind of snickered a</p> <p>18 little bit. Can you tell us why?</p> <p>19 A. It says on page 2, Exhibit 5 that he</p> <p>20 can't return the placement, replacement contract</p> <p>21 because he lost his briefcase on August 11th.</p> <p>22 Q. Does that strike you as humorous?</p> <p>23 A. Yeah, it's unusual.</p> <p>24 Q. On a scale of excuses, is that the best</p>

<p style="text-align: right;">80</p> <p>1 or worst excuse you've ever heard over your forty 2 years of practice?</p> <p>3 A. I, I don't know.</p> <p>4 Q. And if you look at Exhibit 5 on page 2 5 under the cc section, it says Mr. Roger Hughes, 6 Latti Associates Attorneys, do you see that?</p> <p>7 A. Yes, except the Latti is not spelled 8 correctly again.</p> <p>9 Q. Okay. Do you know of any other Latti 10 Associates spelled with an I-E practicing in 11 Boston at that time?</p> <p>12 A. I know of no other.</p> <p>13 Q. Okay, and particularly practicing at --</p> <p>14 A. There could be, I just don't know.</p> <p>15 Q. Okay. Do you know if any other Latti 16 Associates was practicing at 30-31 Union Wharf at 17 that time?</p> <p>18 A. I know that there was no one else.</p> <p>19 Q. Okay, and in August of 1983, that was 20 your correct mailing address or Latti Associates' 21 correct mailing address?</p> <p>22 A. In August of '83, yes.</p> <p>23 Q. Okay, and have you ever seen this letter 24 before?</p>	<p style="text-align: right;">83</p> <p>1 MR. LeBLANC: For the record, I've 2 asked that a letter dated October 10th, 1983 to 3 Robert Liguori from John Noe be marked as 4 Exhibit 7.</p> <p>5 BY MR. LeBLANC:</p> <p>6 Q. Can you take a look at that, please, sir.</p> <p>7 A. I've read Exhibit 7.</p> <p>8 Q. Thank you. I'd like to draw your 9 attention to the carbon copy to Mr. Roger Hughes, 10 Latti Associates Attorneys, Latti spelled 11 correctly this time, 30-31 Union Wharf, Boston.</p> <p>12 A. That is correct, you've read it 13 correctly.</p> <p>14 Q. Okay, and again, the 30-31 Union Wharf, 15 Boston was the correct mailing address for Latti 16 Associates at that time in 1983?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Now, in light of Latti Associates 19 receiving at least three letters regarding the 20 dispute as to the terms of the annuity, does that 21 change your testimony as to what Latti Associates 22 should or shouldn't have done to protect 23 Mr. Dimon's interests?</p> <p>24 MR. DeWICK: Objection.</p>
<p style="text-align: right;">81</p> <p>1 A. I have seen this letter, it was sent to 2 me with the exhibits that were previously marked 3 as I said in depositions. This is one of them.</p> <p>4 Q. Okay.</p> <p>5 A. It had been marked before, but I never 6 saw it before that time.</p> <p>7 Q. And within Latti Associates in terms of 8 your mail distribution policy or practices, what 9 would happen to this letter if it came into the 10 office as a carbon copy?</p> <p>11 A. The person that, either Donna or Cathy 12 would take this letter, and if they knew that 13 Roger Hughes was handling the file, they would put 14 it in his mail folder.</p> <p>15 If they weren't certain who was handling 16 the case, even though it was post verdict, they 17 would look at the card, and that would tell them 18 by the initials, the attorney, and it would go in 19 that folder.</p> <p>20 Q. Okay. Now, during this 1983 period, did 21 you ever become aware of any situation where mail 22 wasn't reaching the intended attorney?</p> <p>23 A. I can't answer that, I don't know.</p> <p>24 Q. Okay.</p>	<p style="text-align: right;">84</p> <p>1 BY MR. LeBLANC:</p> <p>2 A. You've testified that Latti received the 3 documents that you referred to. There is no proof 4 whatsoever that they were received by Latti 5 Associates at the time, so, your question is 6 improper. I can't answer it.</p> <p>7 Q. Okay.</p> <p>8 A. Because that's not the evidence.</p> <p>9 Q. Do you have any evidence or proof that 10 Latti Associates did not receive those letters?</p> <p>11 A. I have no evidence or proof of 12 nonreceipt.</p> <p>13 Q. Okay, and you have testified that in fact 14 that was Latti Associates' address at the time in 15 question?</p> <p>16 A. Yes.</p> <p>17 Q. And that there was no problem with 18 receiving mail at that address at that time that 19 you're aware of?</p> <p>20 A. I did not testify to that, I said I don't 21 know in the early part of '83 whether or not there 22 was difficulties with the mail.</p> <p>23 There was certain mail that we hadn't 24 received that I know it carried into '82, that's</p>
<p style="text-align: right;">82</p> <p>1 MR. LeBLANC: Can you mark this as 2 Exhibit 6, please. 3 (Exhibit No. 6, Letter dated 9/26/83, 4 marked for identification.)</p> <p>5 MR. LeBLANC: For the record, I've 6 asked that a September 26, 1983 letter to John Noe 7 from Robert Liguori be marked as Exhibit 6, it's a 8 two-page letter.</p> <p>9 BY MR. LeBLANC:</p> <p>10 Q. Mr. Latti, can you take a look at that, 11 please?</p> <p>12 A. Okay, I've read Exhibit 6.</p> <p>13 Q. Okay. If you look at that second page of 14 that letter under the cc section, do you see it's 15 carbon copied to Mr. Roger Hughes, Latti 16 Associates Attorneys, 30-31 Union Wharf, Boston?</p> <p>17 A. Again, Latti is spelled wrong. It's got 18 an E on it, and it is as you said except that 19 Latti is spelled incorrectly.</p> <p>20 Q. Okay.</p> <p>21 MR. LeBLANC: Can you mark this as 7. 22 (Exhibit No. 7, Letter dated 23 10/10/83, marked for identification.)</p> <p>24</p>	<p style="text-align: right;">85</p> <p>1 when we moved, and I think it carried into '83, 2 but I'm not certain. I don't remember.</p> <p>3 Q. Okay. So, the early part of '83, there 4 may be some dispute as to whether or not Latti 5 Associates received mail?</p> <p>6 A. There may be.</p> <p>7 Q. Would you agree with me that October of 8 1983 is not the early part of 1983?</p> <p>9 A. Yes.</p> <p>10 Q. And August is not the early part of 1983?</p> <p>11 A. I don't think so.</p> <p>12 Q. Okay. So, there is no dispute as to 13 whether or not Latti Associates received mail that 14 you're aware of in 1983, the latter part of 1983?</p> <p>15 MR. DeWICK: Objection.</p> <p>16 BY MR. LeBLANC:</p> <p>17 A. I don't know, I don't know.</p> <p>18 Q. Do you know of a dispute in the latter 19 part of 1983?</p> <p>20 A. You asked me that question before, you 21 asked that question before, I don't know whether 22 we received it. I have no personal knowledge, I 23 did not receive it. I don't know if somebody else 24 at Latti Associates received it, I don't know.</p>

<p style="text-align: right;">86</p> <p>1 Q. Okay.</p> <p>2 A. That's my testimony.</p> <p>3 Q. Mr. Latti, the question was not whether</p> <p>4 you received this letter, the question was whether</p> <p>5 or not there was any problem with receiving mail</p> <p>6 in the latter portion of 1983?</p> <p>7 A. In the latter part, I don't know if there</p> <p>8 was a problem. There was a problem --</p> <p>9 Q. Thank you.</p> <p>10 A. -- I testified earlier in the earlier</p> <p>11 part, I don't know if there was a problem in the</p> <p>12 latter part of 1983.</p> <p>13 MR. LeBLANC: Could you mark that as</p> <p>14 Exhibit 8, please.</p> <p>15 (Exhibit No. 8, Letter dated</p> <p>16 10/12/83, marked for identification.)</p> <p>17 BY MR. LeBLANC:</p> <p>18 Q. Mr. Latti, can you take a look at that</p> <p>19 letter, please?</p> <p>20 A. I've read Exhibit 8, yeah.</p> <p>21 Q. May I see that, thank you.</p> <p>22 MR. LeBLANC: For the record, I've</p> <p>23 asked that a letter dated October 12th, 1983 from,</p> <p>24 to Barbara Boehm from John Noe be marked as</p>	<p style="text-align: right;">89</p> <p>1 testimony regarding what Latti Associates'</p> <p>2 obligation to Mr. Dimon was?</p> <p>3 MR. DeWICK: Before you answer that,</p> <p>4 would you like to see 5 through 8?</p> <p>5 THE WITNESS: I know which exhibits</p> <p>6 he refers to.</p> <p>7 MR. DeWICK: Okay.</p> <p>8 BY MR. LeBLANC:</p> <p>9 A. No, it does not change my testimony.</p> <p>10 Q. Okay.</p> <p>11 A. No.</p> <p>12 Q. And does it change your testimony any or</p> <p>13 your opinion any that months after receiving these</p> <p>14 letters regarding a dispute in terms of the</p> <p>15 annuity, that Mr. Dimon contacted Latti Associates</p> <p>16 for assistance with payments on the annuity?</p> <p>17 MR. DeWICK: Objection.</p> <p>18 BY MR. LeBLANC:</p> <p>19 A. Again, that is not evidenced that we</p> <p>20 received that and you in your question asked me</p> <p>21 that. I cannot answer your question because there</p> <p>22 is no evidence or facts to establish that we</p> <p>23 received those letters.</p> <p>24 You're assuming we received them. We,</p>
<p style="text-align: right;">87</p> <p>1 Exhibit 8.</p> <p>2 BY MR. LeBLANC:</p> <p>3 Q. Mr. Latti, can you read the first line of</p> <p>4 that letter, please?</p> <p>5 A. "In response to your October 14, 1983, I</p> <p>6 reject and return," that's the first sentence.</p> <p>7 Q. And the date on that, October 14th,</p> <p>8 1983 --</p> <p>9 A. No, the date on it is October 12th, '83.</p> <p>10 Q. And the date cited in the first line is</p> <p>11 October 14th?</p> <p>12 A. The 14th, yeah.</p> <p>13 Q. Would that lead you to believe that the</p> <p>14 October 12th, 1983 date is actually a misdate?</p> <p>15 A. By looking at this, it looks like it is</p> <p>16 an incorrect date.</p> <p>17 Q. Okay, and could you also look on the cc</p> <p>18 section where it's cc'd to Mr. Roger Hughes?</p> <p>19 A. Yes, I see that.</p> <p>20 Q. And in 1983, Mr. Hughes was a partner --</p> <p>21 A. I said yes --</p> <p>22 Q. -- of Latti Associates?</p> <p>23 A. -- three or four times.</p> <p>24 Q. Okay, and in terms of the liability of</p>	<p style="text-align: right;">90</p> <p>1 that is an assumption you're making. I cannot</p> <p>2 answer your question because that is not part of</p> <p>3 the evidence.</p> <p>4 Q. Okay. Would it be fair to say it's</p> <p>5 difficult for you to answer many of my questions</p> <p>6 or some of my questions because of the time lapse</p> <p>7 between when the events occurred and today?</p> <p>8 MR. DeWICK: Objection.</p> <p>9 BY MR. LeBLANC:</p> <p>10 A. No, no, no.</p> <p>11 Q. So, you would have no way of knowing if</p> <p>12 you received these letters if I asked you the</p> <p>13 questions in 1983 as opposed to asking you now in</p> <p>14 2006?</p> <p>15 MR. DeWICK: Objection.</p> <p>16 BY MR. LeBLANC:</p> <p>17 A. I said that I have no knowledge of</p> <p>18 receiving the letters, none. Whether it was then</p> <p>19 or now, I still have no knowledge. I never saw</p> <p>20 those letters until litigation was commenced. I</p> <p>21 never received those letters.</p> <p>22 I was never told anything of a dispute</p> <p>23 between insurance companies, Metropolitan and</p> <p>24 Kemper, except when litigation occurred or shortly</p>
<p style="text-align: right;">88</p> <p>1 Latti Associates, is there a difference in</p> <p>2 liability for the actions of a partner as opposed</p> <p>3 to an associate?</p> <p>4 MR. DeWICK: Objection.</p> <p>5 BY MR. LeBLANC:</p> <p>6 A. I don't know.</p> <p>7 Q. Okay. Are Roger Hughes' actions and</p> <p>8 furtherance of a case handled by Latti Associates,</p> <p>9 are they the responsibility of Latti Associates?</p> <p>10 MR. DeWICK: Objection.</p> <p>11 BY MR. LeBLANC:</p> <p>12 A. I don't know, I don't know. That's for</p> <p>13 the court to determine.</p> <p>14 Q. Okay. Have you ever sued an attorney</p> <p>15 and/or a firm based on legal malpractice?</p> <p>16 A. Have I? I think Latti Associates has,</p> <p>17 I've never sued I don't think, as far as I can</p> <p>18 remember, I've never sued a brother attorney.</p> <p>19 Q. Okay, but the firm that you own may have?</p> <p>20 A. The firm may have, yeah, as far as I can</p> <p>21 remember.</p> <p>22 Q. In light of the exhibits that we looked</p> <p>23 at, Exhibits 5 through 8, do you believe that</p> <p>24 Latti Associates, does it change your prior</p>	<p style="text-align: right;">91</p> <p>1 before when Kaplan called me, I learned there was</p> <p>2 a problem in February '05.</p> <p>3 Q. Okay. So, your testimony here today is</p> <p>4 you don't know if you received them, but you know</p> <p>5 for a fact that you never discussed any of the</p> <p>6 information contained in these letters with any</p> <p>7 person back in 1983?</p> <p>8 A. My testimony stands as it is. I have</p> <p>9 testified continuously.</p> <p>10 Q. Do you think it's more difficult to</p> <p>11 prosecute an action due to a lapse of time?</p> <p>12 MR. DeWICK: Objection.</p> <p>13 BY MR. LeBLANC:</p> <p>14 A. It depends on the action, what the facts</p> <p>15 are and what the circumstances are. Some cases</p> <p>16 yes, others no.</p> <p>17 Q. In this case?</p> <p>18 A. No. That a lapse of time, he had no</p> <p>19 choice but to bring the suit when he was wronged</p> <p>20 because an anticipatory breach is a valid defense.</p> <p>21 We couldn't bring the suit for twenty</p> <p>22 years no matter what way you look at it, and he</p> <p>23 waited for the twentieth year, and then he came to</p> <p>24 an attorney to represent him, so, I don't, so, to</p>

<p style="text-align: right;">92</p> <p>1 answer your question, I don't think seeing the 2 documents set forward in discovery that it has 3 anything to do with lapse of time, I think lapse 4 of time was required in this case. 5 So, I don't see any prejudice whatsoever 6 to his case against the three defendants, 7 Metropolitan, Kemper, or the broker. 8 Q. How about prejudice in his case against 9 you or against Latti Associates? 10 A. I don't see any difficulty, I don't think 11 a case exists between Dimon and us legally. 12 Q. Okay. In your forty plus years of 13 practice, have you ever brought a case in which 14 the defendant had a valid defense? 15 MR. DeWICK: Objection. 16 BY MR. LeBLANC: 17 A. Have I ever brought a case which the 18 defendant had a valid defense? 19 Q. Yes. 20 A. Yeah, of course. 21 Q. Okay. Have you ever not brought a case 22 because the defendant may have a valid defense? 23 A. I can't answer that, I don't know, I 24 don't know.</p>	<p style="text-align: right;">95</p> <p>1 A. Did they, they were not present as far as 2 I can tell from reading the record or the 3 transcript before Pettine, which is Metropolitan, 4 right? 5 Q. Now, they are, yes, Charter Security is 6 now Metropolitan. 7 A. Okay. 8 Q. When you became of counsel in 1999, was 9 it Carolyn Latti and Mr. Anderson? 10 A. David Anderson and myself. 11 Q. They were partners with you at Latti 12 Associates? 13 A. Yes. 14 Q. In 1999? 15 A. Yes. 16 Q. Okay, and then you became of counsel? 17 A. Yes. 18 Q. And at that point, what happened to Latti 19 Associates? 20 A. I think within a year or two, they named 21 the firm, they named, within a year or two, it 22 became Latti & Anderson. 23 Q. And they used the same address? 24 A. They're in the same space but smaller</p>
<p style="text-align: right;">93</p> <p>1 Q. Have you ever made the decision not to 2 bring a case based on what the defense might be? 3 A. Have I ever, I don't think so. I would 4 bring the case and then I would find out what the 5 defense was. 6 Q. Except under these circumstances, right? 7 A. I don't understand your question. 8 Q. Well, you testified earlier that 9 Mr. Dimon wouldn't have a case to bring because 10 the company would have this valid, in your 11 opinion, anticipatory breach claim defense? 12 A. As an attorney, as a lawyer, I cannot see 13 a case brought for Dimon within the twenty years. 14 You have to wait until you were wronged. That is 15 my understanding of the law. 16 Q. Have you ever brought a declaratory 17 judgment action? 18 A. Have I? I don't remember ever bringing 19 one in particular. 20 Q. Okay. Do you know what a declaratory 21 judgment action is? 22 A. Yes, but in this case to determine, if a 23 declaratory judgment was brought, I don't know 24 whether or not the defense is valid of</p>	<p style="text-align: right;">96</p> <p>1 than Latti Associates. 2 Q. Same phone number? 3 A. Same phone number. 4 Q. Same fax number? 5 A. Yeah. 6 Q. Other than changing the names, they 7 handled the same cases? 8 A. I do not know that, I don't know their 9 case load. I have nothing to do with their files 10 when I walked out of the office or the cases. 11 Occasionally, I will offer some help with 12 examination of a witness or something like that, 13 very seldom, and as years have gone on, they don't 14 call. 15 Q. Okay. So, when you left in 1999, you 16 left all your cases there? 17 A. Not everybody stayed when I left. Some 18 of the cases remained and some clients went 19 elsewhere. 20 Q. Okay. 21 MR. LeBLANC: I don't have any 22 further questions. 23 MR. KEANE: Nothing? 24 MS. McQUAY: Nothing.</p>
<p style="text-align: right;">94</p> <p>1 anticipatory breach. 2 Prior to bringing a declaratory judgment, 3 I would do a great deal of research because I'm 4 not familiar with it, and I would determine the 5 merits of whether such an action lies, and then I 6 would look at whether or not he was better off, 7 Dimon, to wait the twenty years, and I call this 8 case that we're involved in a paper case when it 9 involves documents and they speak for themselves 10 and it's not necessary to have testimony or 11 refresh people's recollection. 12 So, whether or not I would bring a 13 declaratory judgment would depend on what he 14 faced, which case was stronger, and I think by far 15 the case that's stronger is in the, and the case 16 that lies is the case that Dimon brought, not 17 against me or the firm, but against the three 18 insurance, and I go again that Dimon can enforce a 19 settlement at any time against Kemper, and he has 20 not, but he has a right to. 21 They guaranteed his payment in front of a 22 federal judge, the chief judge. 23 Q. Okay. Do you know if Charter Security 24 guaranteed a payment in front of a federal judge?</p>	<p style="text-align: right;">97</p> <p style="text-align: center;">CROSS-EXAMINATION</p> <p>1 BY MR. KEANE: 2 Q. Mr. Latti, my name is Brian Keane and I 3 represent Dennis Dimon in this action. 4 A. You are Brian Keane? 5 Q. Brian Keane, and I represent Dennis Dimon 6 in this action, and I'm going to ask you a couple 7 of questions. 8 A. Yeah. 9 Q. You said that Mr. Flannery represented 10 Dennis Dimon at the trial of this matter; is that 11 right? 12 A. The record shows that Joseph Flannery 13 represented him, I do have an independent memory 14 of Flannery, but I'm not sure if somebody sat with 15 him from the office of Latti Associates. 16 Q. Okay, and after the verdict came back and 17 before the ultimate settlement in this case, 18 Mr. Flannery left Latti Associates? 19 A. Yes. 20 Q. Okay. You stated at that time you 21 thought there was an appeal in this case? 22 A. They threatened to file an appeal in the 23 Dimon case, and there was a question in the 24</p>

<p style="text-align: right;">98</p> <p>1 settlement I remember of whether or not we were 2 going to seize the vessel, and in reading the 3 Dimon deposition last night, he said that he did 4 not want to sue the owner and personally take the 5 vessel. 6 So, does that answer your question? 7 Q. It does. I guess my next question is 8 would that appeal also, is it -- strike that. 9 Is it your understanding that that appeal 10 was supposed to be a limitation of action? 11 A. They have a right to appeal within so 12 many days, I think it's thirty days of judgment. 13 I believe, I don't know whether a notice of appeal 14 was filed, but I know that there was another trial 15 from reading the transcript to follow which was a 16 limitation proceeding. 17 Q. Okay. 18 A. Before a judge only, so, it was a case 19 again, I read the transcript, it was tried before 20 Judge Watson, so, there would have been a 21 limitation proceeding before Watson, so, the 22 insurer had a right, Kemper had a right to appeal, 23 and I don't know whether they filed it, and a 24 limitation proceeding as well.</p>	<p style="text-align: right;">101</p> <p>1 A. When Roger Hughes became a partner, which 2 I testified to, that is correct, he had 15 percent 3 and I had 85. 4 Q. Okay. Did that also include 1983 or 5 around the time of the settlement of this Dimon 6 case? 7 A. Yes. 8 Q. If I could show you Exhibit 1, which was 9 previously marked today, and to go back to a 10 question that you heard before, but if you look at 11 attorneys' fees, and I think you said that there 12 was some possibility that maybe Mr. Dimon wanted 13 \$100,000 in his pocket, therefore, there was a 14 decrease in the attorneys fees, but was it your 15 testimony that \$141,485.47 was the attorneys fees 16 in the Dennis Dimon case? 17 A. Yes, that's what it looks like according 18 to this sheet. 19 Q. And of that number, would that mean you 20 would receive 85 percent of that and Mr. Hughes 21 would receive 15 percent? 22 A. No, because overhead in our firm ran 23 anywhere from, it was extremely high, I don't 24 remember what it was in '81, but it was anywhere</p>
<p style="text-align: right;">99</p> <p>1 Q. And is it your understanding that Kemper 2 Insurance at the time of this trial was the 3 insurer of the boat owned by the Jenny C. 4 Corporation? 5 A. Yes, from reading the transcripts. 6 Q. Do you know who brought in Mr. Dimon as a 7 client to Latti Associates? 8 A. No. 9 Q. You spoke about the mail process at Latti 10 Associates in or around 1982, 1983. Was that 11 always your process for receiving mail, the 12 process that you described here today? 13 A. Yes. 14 Q. Was there ever a time in your practice 15 from 1960 to 1983 where you saw all incoming mail 16 on a daily basis? 17 A. What period? 18 Q. 1960 when I think you said you started 19 practicing to 1983? 20 A. No, I saw the mail up to probably, excuse 21 me, first of all, in 1960 I was on trial nearly 22 every single day because it was nothing but 23 litigation. 24 Our firm is strictly litigation, so, I</p>	<p style="text-align: right;">102</p> <p>1 from 40 something percent to 80 something percent, 2 that we only netted at times 20 some odd percent. 3 Q. Off of the 20 percent it would be split 4 85, 15? 5 A. Yes, it would be split off the percentage 6 with the attorney, yeah. 7 Q. Okay. I think you testified earlier that 8 you represented seamen, fishermen at this point of 9 the 80's; is that correct? 10 A. No. I testified that we represented 11 them, but we had an adverse practice. There were 12 many types of cases that we handled including 13 habeas and products liability, business, and that 14 type of thing. 15 Q. Prior to this case, the <u>Dimon vs. Jenny</u> 16 <u>C. Corporation</u>, had you recommended or advised 17 other clients to enter into structured 18 settlements? 19 A. Yes. 20 Q. Would you typically do that for a seaman 21 or a fisherman? 22 A. It would depend on what the interest rate 23 was, what the going rate was at the time, it 24 depends on the circumstances of the settlement,</p>
<p style="text-align: right;">100</p> <p>1 was never there, so, the most senior man would 2 look at the mail and then it would be passed out. 3 I had Kaplan as a partner originally, and 4 I worked for another individual. When it was my 5 ship so to speak in '77 when I became by myself, I 6 employed other people, it was my practice if I was 7 there to see the mail, and then the first person 8 that took the mail from me and responsible for the 9 mail was Roger Hughes, and that was I believe the 10 late 70's or early 80's. 11 Q. But if you were there each day, you would 12 see the mail? 13 A. Up to, good point, I testified that Roger 14 Hughes was responsible for the mail, but I would 15 look at my own mail, he didn't need to look at my 16 mail because I felt that I was responsible with 17 respect to interrogatories, depositions, and I 18 knew how the process worked, so, I looked at my 19 own mail. 20 Q. And I think you testified earlier that at 21 this period of time, 1983, the partnership 22 agreement that you had with Roger Hughes was 85 23 percent for you, Mr. Latti, and 15 percent for 24 Mr. Hughes?</p>	<p style="text-align: right;">103</p> <p>1 whether we felt that he could not handle the money 2 that the, that the seaman was not capable and a 3 structured settlement, so much over a period of 4 years and then he would get that, the very type of 5 settlement we recommended to the individual 6 seaman. 7 Again, a lot of the seaman did not have 8 the education that others did, so, they were not 9 used to large sums of money that was obtained for 10 their injury. 11 Q. With regard to prior structured 12 settlements that you either advised or recommended 13 clients to enter into, did you use Dean Witter 14 Reynolds as a broker? 15 A. No, no, not me personally. 16 Q. And my question was to you personally 17 actually. 18 A. No. 19 Q. Did Latti Associates use Dean Witter 20 Reynolds on previous annuity settlements? 21 A. Usually not. 22 Q. The early 1980's, who did you personally 23 use as a broker? 24 A. There was a friend in New York that he</p>

<p style="text-align: right;">104</p> <p>1 became a friend after many, many cases that he, 2 his office, and I don't remember the name, was 3 strictly structured settlements, and we used the 4 person in New York, I think it was in upper 5 Westchester, I don't remember for sure, and we 6 used an outfit in Arizona or out West, and the way 7 they were picked up was through the American Trial 8 Lawyers which I was a member of. 9 Q. Okay. 10 MR. KEANE: Can I have that marked. 11 (Exhibit No. 9, Docket Sheet, marked 12 for identification.) 13 BY MR. KEANE: 14 Q. Mr. Latti, if you wouldn't mind taking a 15 look at that. 16 A. Okay, I've quickly read Exhibit 9. 17 Q. Do you recognize what Exhibit 9 is, 18 Mr. Latti? 19 A. It looks like a docket sheet for the 20 Dimon case in Rhode Island -- 21 Q. Okay, and -- 22 A. -- in the Federal Court. 23 Q. And I think right at the top, does it say 24 "Affidavit of Michael B. Latti filed"?</p>	<p style="text-align: right;">107</p> <p>1 to prepare the plaintiff even though I did not 2 take the deposition or attend, I would have some 3 input on a heavy case, and I consider the Dimon 4 case a heavy case because he lost his eye. That 5 probably I prepared him except that's dated 6 1/19/82? 7 Q. That's what it looks like. 8 A. I could have prepared him some and had 9 some input into the preparation before he 10 testified, I don't remember though. 11 Q. In preparation on a big case such as you 12 described -- 13 A. Dimon. 14 Q. Dimon, would you sit in with the attorney 15 of record to prepare the plaintiff? 16 A. The attorney that was working on the 17 file, yes. 18 Q. Yes. 19 A. Yes, that attorney would be present when 20 I prepared him most of the time, most of the time. 21 Q. I think you testified earlier that, you 22 may not have called it this, but your document 23 retention program at Latti Associates was roughly 24 six to eight years?</p>
<p style="text-align: right;">105</p> <p>1 A. All affidavits were filed by Michael B. 2 Latti. In seaman's cases, it was a standard form 3 mimeographed, so, my name went on every, just 4 about, I don't know of a case in a seaman's case 5 that the affidavit was not filed by me, it was a 6 form that was mimeographed and the secretary 7 signed my name. 8 Q. Other than in, I think looking at that 9 document in 1983, do you see an entry of 10 appearance from anyone from your office? 11 A. Entry of appearance of Joseph Flannery. 12 Q. And that's in -- 13 A. January 3rd, 1983. 14 Q. Okay. Prior to that entry of Joseph 15 Flannery, do you see any other entries of 16 appearance? 17 A. No. 18 Q. Would that indicate that you filed the 19 Dennis Dimon case in Federal Court in Providence? 20 A. No, because as I said, every seaman's 21 affidavit had my name on it that I know, then the 22 attorney would file a complaint that was told to 23 handle the case or to him. Maybe I was the 24 handling partner, excuse me, the handling attorney</p>	<p style="text-align: right;">108</p> <p>1 A. The what? 2 Q. How long you retain files after a case 3 had been concluded? 4 A. Six or eight years was a start, and then 5 it changed as the computers came into being and 6 storage, and then we changed the warehouse and 7 everything. 8 Q. Exactly, that was your testimony earlier, 9 correct? 10 A. Yeah, yeah. 11 Q. And then you also spoke about potential 12 defenses for parties in this action in and around 13 1983. One of the defenses you listed was 14 anticipatory breach. 15 A. Right. 16 Q. And you had said that you couldn't bring 17 a suit based on that defense in 1983, you would 18 have to wait the period of time for the annuity to 19 run before you could bring a case? 20 A. If the letters were received, in other 21 words, I had no, assuming that I was aware, what 22 would I do, and that's assuming. 23 Q. Exactly, yes. 24 A. Yes, I testified to that.</p>
<p style="text-align: right;">106</p> <p>1 up to a certain point. 2 Again, that point occurred probably in 3 November or December of '83. I notice Flannery 4 filed an appearance January 3rd, '83. I think I 5 was still in the hospital, so, what I'm saying is 6 I don't know -- 7 Q. Okay. 8 A. -- whether I was the attorney that filed 9 the complaint. 10 Q. Okay. There is an entry on there, I 11 apologize, I don't have my own copy, 1/19/82. 12 A. Okay. 13 Q. A notice of deposition of Dennis Jay, and 14 it looks like the end is cut off, but Dimon? 15 A. Yes, Dimon even though it is not 16 photographed. 17 Q. Do you have a recollection of attending 18 that deposition? 19 A. No. 20 Q. Do you have a recollection of preparing 21 Mr. Dimon for that deposition? 22 A. No. 23 Q. Okay. 24 A. Except it was my practice on a heavy case</p>	<p style="text-align: right;">109</p> <p>1 Q. Okay. I guess my question is in an 2 annuity case such as this and understanding that 3 those could be possible defenses brought at the 4 time of the commencement of the annuity -- 5 A. You mean commencement of the suit. 6 Q. Commencement of the annuity or if there 7 is a problem with the annuity at the 8 beginning -- let me start over. 9 You testified there was anticipatory 10 breach may be a possible defense for any of the 11 parties in this case. 12 A. Right. 13 Q. My question is if that's a possible 14 defense and a reason not to bring the case early 15 on in the annuity, wouldn't it be prudent to keep 16 documents on annuity cases for longer than the 17 twenty years? 18 A. If you had knowledge of the situation of 19 the companies disputing, which I had no knowledge 20 of. 21 Q. Okay, and other than the documents that 22 had been produced by your attorney pursuant to 23 document requests and initial disclosures, you 24 have no other documents concerning this case or</p>

<p style="text-align: right;">110</p> <p>1 the Jenny C. case; is that correct?</p> <p>2 A. That's correct.</p> <p>3 Q. On the underlying case here, Dimon vs.</p> <p>4 The Jenny C. Corporation, would you have to</p> <p>5 approve the settlement in that matter?</p> <p>6 A. The judge had to approve the settlement</p> <p>7 in the Dimon case.</p> <p>8 Q. I meant actually within your office, I</p> <p>9 understand that --</p> <p>10 A. Do I have to approve a settlement that's</p> <p>11 conducted by another lawyer or just in the Dimon</p> <p>12 case are you referring to?</p> <p>13 Q. Let me ask you, in the Dimon case, did</p> <p>14 you approve the ultimate settlement in that case?</p> <p>15 A. Yes.</p> <p>16 Q. Did you approve that settlement based on</p> <p>17 a meeting with Dennis Dimon and his wife and his</p> <p>18 mother?</p> <p>19 A. I, I approved of the settlement based on</p> <p>20 either, somehow I became aware of the terms of the</p> <p>21 settlement and the terms of the settlement and</p> <p>22 their, based on the circumstances of the Dimon</p> <p>23 case of all the defenses and the problems involved</p> <p>24 and the insurance involved, so, that settlement</p>	<p style="text-align: right;">113</p> <p>1 testimony.</p> <p>2 A. Yeah.</p> <p>3 Q. You said after you learned the terms of</p> <p>4 the settlement, you recommended that to?</p> <p>5 A. After I learned I recommended it to</p> <p>6 Dennis Dimon, yes.</p> <p>7 Q. Did you participate in the negotiation of</p> <p>8 the settlement terms yourself?</p> <p>9 A. I have no memory of that.</p> <p>10 Q. Okay. Do you have any memory of</p> <p>11 contacting anyone at American Motorists Insurance</p> <p>12 Company regarding the settlement of this case?</p> <p>13 A. Contacting Kemper or American Motorists,</p> <p>14 right?</p> <p>15 Q. Correct. Well, I'll take it in two parts</p> <p>16 just so we're clear, did you contact anyone at</p> <p>17 Kemper Insurance Company regarding the settlement</p> <p>18 of the case?</p> <p>19 A. I don't, I don't think so.</p> <p>20 Q. Did you contact anyone at American</p> <p>21 Motorist -- pardon me, did you contact anyone at</p> <p>22 American Motorists Insurance Company regarding</p> <p>23 settlement of the case?</p> <p>24 A. I don't remember contacting either</p>
<p style="text-align: right;">111</p> <p>1 seemed fair, and I do remember I recommended it to</p> <p>2 Dimon.</p> <p>3 Q. Because of Mr. Dimon's education, his</p> <p>4 understanding, his injury, did you think it was</p> <p>5 important that Mr. Dimon receive payments for his</p> <p>6 life as settlement of this matter?</p> <p>7 A. I thought it was important because of the</p> <p>8 nature of the person I was dealing with, that was</p> <p>9 very important, that he accept a structured</p> <p>10 settlement, and I do remember this from reading</p> <p>11 his deposition last night, that he was very keen</p> <p>12 because he did not pay income tax on the</p> <p>13 structured settlement.</p> <p>14 That was very important, and the interest</p> <p>15 rate was high at that point, '83.</p> <p>16 Q. You say he was very keen, did he not want</p> <p>17 to pay income tax on the structured settlement, is</p> <p>18 that what you're saying?</p> <p>19 A. It was better for him that he take the</p> <p>20 money and he could get the money and he didn't</p> <p>21 have to pay taxes on that money received because</p> <p>22 he did not own the policy, the policy was owned by</p> <p>23 Kemper, that was important.</p> <p>24 Q. All right.</p>	<p style="text-align: right;">114</p> <p>1 American Motorists or Kemper, but I could have.</p> <p>2 Q. Okay. Do you remember contacting either</p> <p>3 one of them in response to the letters that were</p> <p>4 previously introduced today, Exhibits 5 through 8?</p> <p>5 A. I never had any knowledge of those</p> <p>6 letters.</p> <p>7 Q. Okay. So, you wouldn't have spoken with</p> <p>8 anyone at American Motorists?</p> <p>9 A. So, I would never speak with them because</p> <p>10 of the letters.</p> <p>11 Q. Okay. You testified today that in</p> <p>12 advance and in preparation of this deposition, you</p> <p>13 reviewed a variety of documentation, correct?</p> <p>14 A. Yes.</p> <p>15 Q. But you do not recall reviewing any of</p> <p>16 that documentation or seeing any of that</p> <p>17 documentation prior to the commencement of this</p> <p>18 action, correct?</p> <p>19 A. Only those documents that Carolyn Latti</p> <p>20 sent me I testified to, there was four or five</p> <p>21 documents there.</p> <p>22 Q. Okay.</p> <p>23 A. Then I saw the other documents after this</p> <p>24 lawsuit was commenced through my attorney who sent</p>
<p style="text-align: right;">112</p> <p>1 A. Very important.</p> <p>2 Q. Mr. Latti, if you just give me one</p> <p>3 minute. At the time of, at the period of time</p> <p>4 around the settlement of the Jenny C. action, were</p> <p>5 you aware that this matter had to go before a</p> <p>6 judge with a guardian ad litem for approval of</p> <p>7 settlement?</p> <p>8 A. Before this erupted, before this</p> <p>9 litigation ensued, no, I don't have a memory that</p> <p>10 a person appeared before Pettine and everything,</p> <p>11 only from the documents.</p> <p>12 Q. Okay.</p> <p>13 MR. KEANE: That's all I have, thank</p> <p>14 you.</p> <p>15 MR. LeBLANC: Kevin?</p> <p>16 MR. GOLDEN: Yes.</p> <p>17 MR. LeBLANC: Do you have anything?</p> <p>18 MR. GOLDEN: Yes, a couple of</p> <p>19 questions.</p> <p>20 RECROSS EXAMINATION</p> <p>21 BY MR. GOLDEN:</p> <p>22 Q. Mr. Latti, my name is Kevin Golden for</p> <p>23 Kemper Insurance Company, and I want to follow-up</p> <p>24 with some questions related to your prior</p>	<p style="text-align: right;">115</p> <p>1 them to me.</p> <p>2 Q. Okay, and you just testified shortly ago</p> <p>3 you have no other documentation relating to this</p> <p>4 dispute outside from the documentation from your</p> <p>5 attorney and from Carolyn Latti, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. Getting back to your prior</p> <p>8 testimony, you stated that Kemper had agreed to</p> <p>9 make certain payments to Mr. Dimon. Is the basis</p> <p>10 for your testimony limited to the documentation</p> <p>11 which you just acknowledged you've seen in advance</p> <p>12 of this case?</p> <p>13 A. Yes.</p> <p>14 MR. DeWICK: Objection.</p> <p>15 BY MR. GOLDEN:</p> <p>16 A. Yes.</p> <p>17 Q. And you have no other basis for that</p> <p>18 understanding, correct?</p> <p>19 A. I have, I did learn, I do have a memory</p> <p>20 of talking to Dimon of the structured settlement</p> <p>21 of the terms of the settlement and recommending</p> <p>22 the settlement to Dimon, so, it's more than just</p> <p>23 the transcript, it's that they insured the vessel,</p> <p>24 Kemper, I knew that and I remember that.</p>

<p>116</p> <p>1 Q. Right.</p> <p>2 A. And I recommended the settlement and</p> <p>3 inferred, I mean I would have inferred that Kemper</p> <p>4 insured the vessel, I mean I knew that at the</p> <p>5 time.</p> <p>6 Q. Does the name Home Insurance Company ring</p> <p>7 any bells for you?</p> <p>8 A. From reading the transcript, they had the</p> <p>9 primary insurance, I don't know, 500,000, and</p> <p>10 Lumberman's or Kemper had 400,000 bucks, \$400,000.</p> <p>11 Q. What was your understanding of the</p> <p>12 involvement of Home Insurance Company in the</p> <p>13 underlying dispute?</p> <p>14 A. Only from the transcript that, before</p> <p>15 Pettine, Decof testified that they paid the</p> <p>16 maintenance and they paid the medical bills and</p> <p>17 with the attorneys' fees, it was almost used up if</p> <p>18 not used up.</p> <p>19 Q. Okay. Now, with reference to this</p> <p>20 hearing before Pettine, were you present at that</p> <p>21 hearing?</p> <p>22 A. No.</p> <p>23 Q. So, the basis for any opinion you would</p> <p>24 make relating to that hearing is limited to the</p>	<p>119</p> <p>1 A. Based on their injuries.</p> <p>2 Q. Okay.</p> <p>3 A. That they were fairly compensated.</p> <p>4 Q. Okay, and you testified in response to</p> <p>5 questions from Mr. Keane that another goal that</p> <p>6 you might have is depending on the nature of the</p> <p>7 person I think is the words you used, you may want</p> <p>8 to structure a settlement to protect that person;</p> <p>9 is that right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. So, you also, I guess one of your</p> <p>12 considerations in reaching a settlement like was</p> <p>13 reached in the <u>Dimon vs. Jenny C.</u> case was</p> <p>14 twofold, to get them fair compensation and to</p> <p>15 protect them from themselves in essence by not</p> <p>16 giving them a large lump sum of money and letting</p> <p>17 them walk away, is that fair?</p> <p>18 MR. DeWICK: Objection.</p> <p>19 BY MR. LeBLANC:</p> <p>20 A. Many of the cases called for that, yes.</p> <p>21 Q. Okay, and in fact, in this case, Pettine</p> <p>22 was concerned about Mr. Dimon's ability to handle</p> <p>23 and/or understand the settlement?</p> <p>24 A. Yes.</p>
<p>117</p> <p>1 transcript you reviewed?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. In that transcript, that</p> <p>4 transcript does not contain any testimony relating</p> <p>5 to any of the annuity terms, correct?</p> <p>6 A. I don't remember exactly, but I don't</p> <p>7 think it even though the attorney was present.</p> <p>8 Q. Okay.</p> <p>9 A. That attorney was present for Kemper</p> <p>10 according to the transcript.</p> <p>11 Q. Right, and in addition, but it does not</p> <p>12 contain any representations by that attorney with</p> <p>13 respect to what Kemper agreed to pay, correct?</p> <p>14 A. No, I didn't read any, no.</p> <p>15 Q. All right. One final question just so I</p> <p>16 can be clear, this may sound familiar, I'm just</p> <p>17 going to follow-up on a question I previously</p> <p>18 asked.</p> <p>19 With respect to your understanding of</p> <p>20 Kemper's obligations in this case, that would be</p> <p>21 limited to documentation that you reviewed with</p> <p>22 your attorney, the transcripts that we just</p> <p>23 discussed in front of Pettine, and any</p> <p>24 conversations you might have had with Mr. Dimon,</p>	<p>120</p> <p>1 Q. And that's why he appointed Mr. Decof?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. So, part of your goal as an</p> <p>4 attorney representing a client in a personal</p> <p>5 injury action, a client like Mr. Dimon was not</p> <p>6 just to protect their interests now but to protect</p> <p>7 their interests into the future?</p> <p>8 A. To help them into the future, yeah.</p> <p>9 Q. Okay.</p> <p>10 MR. LeBLANC: I don't have any</p> <p>11 further questions.</p> <p>12 MR. DeWICK: Thank you.</p> <p>13 (Whereupon, the deposition concluded</p> <p>14 at 2:20 p.m.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p>118</p> <p>1 correct?</p> <p>2 A. Can you ask --</p> <p>3 THE WITNESS: Do you want the</p> <p>4 reporter to read it or ask me the question again?</p> <p>5 BY MR. GOLDEN:</p> <p>6 Q. Let me rephrase it maybe to make it more</p> <p>7 simple. The basis for your opinion of Kemper's</p> <p>8 obligation is based upon the documentation that</p> <p>9 you reviewed in advance of today's testimony and</p> <p>10 the transcripts before Pettine, correct?</p> <p>11 A. Well, yes and no. It's based on my</p> <p>12 experience, knowledge of the law, and plus the</p> <p>13 transcripts and documents that I reviewed, yes.</p> <p>14 Q. Okay.</p> <p>15 MR. GOLDEN: That's all the questions</p> <p>16 I have.</p> <p>17 MR. LeBLANC: Just one quick</p> <p>18 question.</p> <p>19 REDIRECT EXAMINATION</p> <p>20 BY MR. LeBLANC:</p> <p>21 Q. You testified earlier that one of the</p> <p>22 goals of representing a client in a personal</p> <p>23 injury action was to get them the most you could</p> <p>24 get for them, the most compensation?</p>	<p>121</p> <p>1 I, Michael B. Latti, having read the</p> <p>2 foregoing transcript of my testimony, do hereby</p> <p>3 certify under the pains and penalties of perjury</p> <p>4 the same contains a true and accurate record of my</p> <p>5 answers to the questions herein set forth,</p> <p>6 together with correction pages, if any, attached.</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 <u>MICHAEL B. LATTI</u></p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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1	CERTIFICATE	123
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3	COMMONWEALTH OF MASSACHUSETTS	
4	SUFFOLK, SS.	
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7	I, Julie A. Healey, Certified Shorthand	
8	Reporter, Registered Professional Reporter, and	
9	Notary Public in and for the Commonwealth of	
10	Massachusetts, do hereby certify:	
11	That MICHAEL B. LATTI, the witness whose	
12	testimony is hereinbefore set forth, was duly	
13	sworn by me and that such testimony is a true and	
14	accurate record of my stenotype notes taken in the	
15	foregoing matter, to the best of my knowledge,	
16	skill and ability.	
17	IN WITNESS WHEREOF, I have hereunto set	
18	my hand and Notarial Seal this 8th day of August,	
19	2006.	
20		
21		
22	Julie A. Healey	
23	CSR, RPR	
24	Notary Public	
24	My Commission Expires: March 26, 2010	

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CASE Dimon v. Jenny C. CorporationDATE OF SETTLEMENT 4 '19 '83SUBMITTED BY REH/MRLSETTLEMENT SHEET

GROSS SETTLEMENT

\$ 425,000.00LESS - Paid Bills & Expenses:

175,000.00 Annuity

250,000.00 Up-front

E. Fee \$ 60.00Lancer Co. (Investigation) \$ 336.75Investigo (Investigation) \$ 958.15Med. Recs. \$ 3.60Depositions 467.60Boston Photo (Copies) \$ 58.80Travel Exp - R.I.-TrialMeals - Misc. Exp. \$ 454.78Witness Fees - Experts \$ 517.70 \$ \$

Unpaid Bills & Expenses:

Valed (Depos) \$ 219.75Valed (Depos) \$ 207.25Potter & McArthur Expert \$ 3812.90Bristol D. Sheriffs \$ 17.25Moore Virgadamo \$ 400.00Dr. Levin 1,000.00ATTORNEYS FEE (sb) 141,666.66 \$ 141,485.47

TOTAL BILLS & EXPENSES

\$ 150,000.00

BALANCE DUE TO CLIENT

\$ 100,000.00Attorney's Fee \$

Less

IRS lien

4,679.35

Referral Fee to:

95,320.65 \$

Referral Fee to:

 \$

1 A. Yes, true.

2 Q. They did not come through any other third
3 party?

4 A. No.

5 Q. For example, they didn't come through
6 Latti Associates?

7 A. Right.

8 Q. After the Jenny C. case settled and you
9 began receiving the checks, did you have any
10 contact after that point with anyone from Latti or
11 Latti & Associates?

12 A. Very brief, yeah, nothing as far as
13 discussing on how much, you know, what was going
14 on with the money itself.

15 Q. When did that contact occur?

16 A. Um, just when simple things would come
17 up, like, one time when it changed hands, it was,
18 it was kind of late and stuff like that, it was,
19 like, almost two months late, something like that,
20 and we had to call up and find out what was going
21 on then, you know, because we always tried to keep
22 track of it to find out what was going on.

23 You know, there were brief, they were
24 just brief, you know.

1 Q. So, there was a time when the payments
2 from the insurance company were two months late?

3 A. Yeah, generally when it changed hands,
4 that's the way I took it, you know.

5 Q. But do you recall a specific instance
6 when the payments were two months late?

7 A. Just one that I know of, yeah.

8 Q. And do you recall generally when that
9 happened, what year, how long after the annuity
10 issued?

11 A. No, I can't remember right offhand, no,
12 exactly when.

13 Q. Was it closer in time to when the annuity
14 issued or closer in time to when the annuity
15 stopped paying, do you know that?

16 A. It was when the annuity was first going
17 on, it was, like, maybe, I would say a year after
18 it had started.

19 Q. Okay, and when the payments were two
20 months late, you contacted Latti Associates at
21 that point?

22 A. Right.

23 Q. And do you recall who you spoke to
24 directly?

1 A. No, I don't.

2 Q. And what did you ask them to do at that
3 time, if anything?

4 A. Well, I asked them if they could find out
5 what was going on and stuff like that, and they
6 did get back to me at one time and said that it
7 was on its way, that it was in the mail.

8 They didn't specify exactly what had
9 happened or anything else like that, they just
10 said, you know, that it was on its way.

11 Q. Okay. Other than that time where the
12 payments were two months late, were there other
13 times that you contacted Latti Associates?

14 A. No.

15 Q. So, that the next time you contacted them
16 after that was in June of '03 when the payments
17 stopped; is that correct?

18 A. Basically, yeah.

19 Q. Well, are there any other times that you
20 can recall between --

21 A. Not that I can recall, no.

22 Q. To your knowledge, did anyone on your
23 behalf, your wife or your mother or anyone else,
24 contact Latti Associates during that time?

06/28/2006 13:04 IFAX Fax_Center@dbr.com
 JUN. 28. 2006 11:58AM CIAPCIAK AND ASSOCIATES PC
 Jun-12-2006 11:58AM

+ Fax Center 046/064
 T-31NO.14011/004P.10/28

99 Fortin Road
 Kingston, RI 02881
 Phone: (401) 788.8277
 Fax: (401) 788.8278

FAX

icopy

JUN 12 2003

To: CAROLYN LATTIE From: Dennis Dimona

Fax: 1-617-523-7394 Pages:

Phone: Date: 6/12/03

Re: CCI

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

* Comments

06/28/2006 13:04 IFAX Fax_Center@dbr.com
Jun-12-JUN.28.2006 11:58AM CIAPCIAK AND ASSOCIATES PC

+ Fax Center 047/064
NO. 140 P. 11/28

Metropolitan Life Insurance Company
Annuity Administration Operations
12902 East 51st Street, PO Box 22053, Tulsa, OK 74121-2053

MetLife®

June 9, 2003

DENNIS DIMON
PO BOX 56
WEST KINGSTON RI 02892 0056

RE: SCIW1126

Dear Mr. Dimon,

This letter is in response to a phone call we received from Katherine Dimon. Since your annuity contract has expired, we are unable to provide you with a duplicate contract. However, the terms of your annuity are described below.

The annuity contract was issued on May 5, 1983 under the "Certain 20 Year" option. American Motorist Insurance Company was considered to be the owner of the annuity, however, you were the annuitant and payee. This contract provided you with a monthly income due on June 5th of each year payable for a total of 20 years (240 monthly payments). The payment amount increased by 3% each year.

The first payment was on June 5, 1983. The final payment was on May 5, 2003.

If you have any questions, please call our customer service center at 1-800-635-7775.

Sincerely,

Sandy Franklin

Sandy Franklin
Annuity Payout Specialist III
Annuity Administration Operations

06/28/2006 13:04 IFAX Fax_Center@dbr.com
 Jun-12-JUN.28.2006 11:58AM CIAPCIK AND ASSOCIATES PC

+ Fax Center 048/064
 NO. 140 P. 12/28

ATT.
 CAROLynn
 Latta

DEAN WITTER REYNOLDS INC.
 One Boston Place, Boston, MA 02108 Telephone (617) 722-5500

April 8, 1983

PROPOSAL BY
 CHARTER SECURITY LIFE INSURANCE COMPANY
 OF NEW JERSEY
 FOR A
 LIFE ANNUITY 20 YEAR CERTAIN
 UNDER A STRUCTURED ANNUITY SETTLEMENT
 OF \$1,450.45 PER MONTH FOR THE FIRST
 YEAR AND IT WOULD INCREASE 3%
 PER YEAR AS FOLLOWS:

2ND YEAR	\$1,493.96
3RD YEAR	\$1,538.78
4TH YEAR	\$1,584.95*
5TH YEAR	\$1,632.49
6TH YEAR	\$1,681.47
7TH YEAR	\$1,731.91
8TH YEAR	\$1,783.87
9TH YEAR	\$1,837.38
10TH YEAR	\$1,892.51
20TH YEAR	\$2,543.37
30TH YEAR	\$3,418.08
40TH YEAR	\$4,593.61
50TH YEAR	\$6,173.43

*Citation: New York State Insurance Department
 and this is a copy of the original
 Signed: [Signature]

180 5718.96
 567.52
 947.05
 067.37
 944,151.67

A. M. BEST RATING

06/28/2006 13:04 IFAX Fax_Center@dbr.com
JUN-12JUN.28.2006 11:58AM CIAPCIK AND ASSOCIATES PC

+ Fax Center 049/064
T-9NO.14004/DDP.13/28

06-12-03

DENNIS J. DIMON
KATHERINE I. DIMON

151 Holly Ridge RD.
PO Box 56
WEST Kingston RT.
02892

ATTN:
CAYDON
JATTIE

401-782-4613 Home Phone
401-207-9197 Cell Phone

Charter Security Life Insurance Co.

We had the understand that my
wife was to collect this check up to
20 years. ~~and~~ if anything happen to me
and I was to collect it for 50 years

THANK YOU

Dennis Dimon
[Signature]

Black Ink

83A08153

ANNUITY
APPLICATION

CHARTER SECURITY LIFE INSURANCE COMPANY, NEW YORK, 720 FIFTH AVENUE, NEW YORK, N.Y. 10019

Name of Annuitant (please print) <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female Dennis J. Dixon		9. Type of Contract Single Premium-Deferred Annuity
Date and Place of Birth 12/9/59 So. Kingstown, RI		10. Single Premium Amount \$ 175,000.
Residence (No., Street, City, State and Zip Code) Laura Lane, West Kingston, RI 02892		11. Maturity Age <input type="checkbox"/> 65 <input type="checkbox"/> 70% <input type="checkbox"/> Other: Immediate 6/15/83
Business Address (include Name of Employer)		12. Will this annuity replace or change any existing life insurance or annuity contract? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If yes, give name of company, policy number, and plan of life insurance or annuity.)
Mail Notices to <input type="checkbox"/> Residence <input type="checkbox"/> Business <input type="checkbox"/> Owner		13. Is this contribution for a tax qualified plan? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If so, contract will be issued with a limitation on transferability to conform with IRS regulations. (Check appropriate box for type of qualified plan.) <input type="checkbox"/> L.R.A. Rollover <input type="checkbox"/> Corporate pension or profit sharing plan <input type="checkbox"/> T.S.A. Exchange <input type="checkbox"/> Terminal Funding <input type="checkbox"/> H.R. 10 Exchange <input type="checkbox"/> Other <input type="checkbox"/> H.R. 10
Social Security No. 036-44-8733		14. Special Requests Immediate Annuity 20yr Certain - 3% interest \$175,000 = 1450.45 per month (first) = 71
Owner (if other than Proposed Annuitant) Name: American Motorists Insurance Co. Relationship: Address: Social Security Tax Payer I.D. No. 36-0727430 <input type="checkbox"/> Contingent Owner		15. Amendments and Corrections (For Home Office use only) Quote Number 50113
Beneficiary and Relationship Primary: Katherine I. Dixon. Contingent: Jessica I. Dixon - Daughter Rebecca Leo Dixon - Daughter		

undersigned represent(s) to the best of his (her) knowledge and belief, that the foregoing statements and answers are complete, true, and correctly recorded and agree(s) to be bound by statements and answers made or to be made in this application. The undersigned further expressly agree(s) as follows:
This application and any policy issued in consequence of shall constitute the entire contract. No agent is authorized to make or modify contracts, to waive any of the company's rights or requirements or to bind the Company by any promise, representation or information, unless the same be in writing, submitted to the Company, and made a part of such policy.

2. Acceptance of any contract(s) issued on the basis of the application shall constitute a ratification and acceptance of any change, correction, addition or amendment noted by the company in the "Amendments and Corrections" section above, except that in those jurisdictions where it is required any change in amount or benefits shall require a written consent by the Proposed Annuitant and by the Applicant if other than the Proposed Annuitant.

I at Springfield, NY this 4th day of May, 1983

[Signature]
Agent Signature (1)

621-61
Code

Please Print Name of Agent (1)

Agent Signature (2)

Code

Please Print Name of Agent (2)

Signature of Annuitant

[Signature]

Applicant if other than Annuitant

[Signature]

By

Signature and Title

[Signature]
Please Print Name of General Agent

0000100



Lumbermens Mutual Casualty Company • American Motorists Insurance Company
American Manufacturers Mutual Insurance Company • American Protection Insurance Company

Long Grove, IL 60049 • 312/540-2000

August 12, 1983

Mr. Robert A. Foley
Dean Witter Reynolds, Inc.
One Boston Place
Boston, Massachusetts 02108

Dear Mr. Foley:

DENNIS DIMON
CHARTER SECURITY POLICY NO: 83 A 08153
OUR FILE NO: 399 LM 106125-Z

I received the replacement policy issued by Charter Security Life Insurance Company (New York) changing the terms of the annuity from 240 months certain and life thereafter to 240 months certain only.

I am advised by Mr. Hughes of Lattie Associates that your quotation was to provide an annuity which would pay \$1,450.45 per month for the first year increasing annually at a rate of 3% compounded annually for 240 months certain and life thereafter for a single premium of \$175,000. This was the benefit to be provided under the terms of a general release and settlement agreement approved by Judge Pettine of the United States District Court for the District of Rhode Island.

The agreed upon premium was paid and a policy issued which is now in the files of the contract owner, American Motorists Insurance Company, providing benefits required by the release, settlement agreement and court order. I consider the original annuity contract valid and enforceable and will retain it in our files.



000025

Mr. Robert A. Foley
August 12, 1983

-2-

I intended to return the replacement contract issued by Barbara Boehm of Charter Security, but it was lost with my briefcase on August 11, 1983.

Very truly yours,

AMERICAN MOTORISTS INSURANCE COMPANY



John L. Noe
Home Office Claim

JLN:bw

cc: Ms. Barbara Boehm
Vice President
Charter Security Life Insurance Company
(New York)
720 Fifth Avenue
New York City, New York 10019

Mr. Roger Hughes
Lattie Associates, Attorneys
30-31 Union Wharf
Boston, MA 02109

000026



Charter Security Life Insurance Company (New York)
720 Fifth Avenue
New York, New York 10019
Telephone 212-397-2350

September 26, 1983

Mr. John L. Noe
Home Office Claim
American Motorists
Insurance Company
Long Grove, Illinois 60049

Re: Dennis Dimon - Policy No. 83 A 08153
Your File No. 399 LM 106125-2

Dear Mr. Noe:

I am in receipt of your letter to Barbara Boehm, Vice President of Charter Security Life Insurance Company (New York ("CSL(NY)"), regarding the annuity policy (Policy No. 83 A 08153) issued by CSL(NY) to Dennis Dimon.

According to information you received from Mr. Hughes of Lattie Associates, Robert Foley of Dean Witter Reynolds, Inc., allegedly offered to provide Mr. Dimon with a CSL(NY) annuity which would pay \$1,450.45 per month for the first year increasing annually at a rate of 3% compounded annually for 240 months certain and life thereafter based on a single premium of \$175,000.00.

Contrary to the information you received from Mr. Hughes, there is nothing to indicate that anything other than a single premium immediate annuity with a 20 year (i.e., 240 months) certain period was applied for. As you can see from the attached copy of Mr. Dimon's application, which American Motorists Insurance Company signed as applicant, a 20 year certain policy was applied for. I have also attached for your reference, a copy of a quotation sheet from CSL(NY) to Mr. Foley which clearly shows that CSL(NY)'s quote was based on the issuance of a certain period annuity without a life option. As previously explained by Ms. Boehm in her letter to Mr. Kurt Snyder of Dean Witter Reynolds dated July 14, 1983 (see enclosed copy), the option indicated on the Supplementary Contract originally sent to Dean Witter Reynolds on June 17, 1983 for delivery to your office was incorrectly typed as a 240 month certain and life thereafter annuity instead of 240 months only. Again, on behalf of CSL(NY), I apologize for this oversight.

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Mr. John L. Noe
Page 2
September 26, 1983

Based on the foregoing, CSL(NY) guarantees to continue to pay Mr. Dimon under the terms of his policy a \$1,450.45 monthly annuity during the first policy year, which will increase annually at a rate of 3% compounded annually for 240 months certain. No payments will be made beyond the expiration of the 240 month period. Accordingly, the original Supplementary Contract mailed to Robert Foley and in your possession is null and void. I would appreciate your returning that contract to:

Barbara Boehm
Vice President
Policyowner Service Department
Charter Security Life
Insurance Company (New York)
720 Fifth Avenue
New York, New York 10019

By copy of this letter, I am instructing Ms. Boehm to send to your attention a correct copy of the Supplementary Contract for Dennis Dimon which you stated was lost with your briefcase on August 11, 1983.

If I can be of any further assistance in this matter, please do not hesitate to contact me at the above address.

Very truly yours,

Robert Liguori
Counsel

RL/spf
Enclosures

cc: Ms. Barbara Boehm

Mr. Robert A. Foley
Dean Witter Reynolds, Inc.
One Boston Place
Boston, Massachusetts 02108

Mr. Roger Hughes
Lattie Associates, Attorneys
30-31 Union Wharf
Boston, MA 02109

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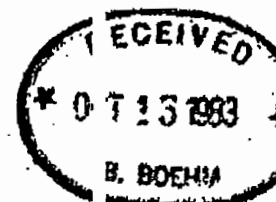


Lumbermen's Mutual Casualty Company • American Motorists Insurance Company
American Manufacturers Mutual Insurance Company • American Protection Insurance Company

Long Grove, IL 60049 - 312/540-2000

October 10, 1983

Mr. Robert Liguori, Counsel
Charter Security Life Insurance
Company (New York)
720 Fifth Avenue
New York, New York 10019



Dear Mr. Liguori:

DENNIS DIMON
CHARTER SECURITY POLICY: 83A08153
OUR FILE NO: 399 LM 106125-2

In reply to your September 26, 1983, Sections 14 and 15 of the application that I signed were blank. The entries now appearing were filled in after I returned the signed application.

The original annuity policy received was for a term of 240 months certain and life thereafter as ordered and agreed upon between Mr. Hughes and Mr. Foley. Your agent, Mr. Foley further confirmed this to me by telephone in April, 1983. May I suggest you contact him to verify this?

I intend to retain the original policy in our files and consider it to be valid and enforceable.

Very truly yours,

AMERICAN MOTORISTS INSURANCE COMPANY


John L. Noe
Home Office Claim

JLN:ml

cc: Mr. Robert A. Foley
Dean Witter Reynolds, Inc.
One Boston Place
Boston, MA 02108

Mr. Roger Hughes
Latti Assoc., Attorneys
30-31 Union Wharf
Boston, MA 02109

cc: Ms. Barbara Boehm
Vice President
Policyowner Service Dept.
Charter Security Life
Insurance Co. (New York)
720 Fifth Avenue
New York, NY 10019

000029



Lumbermens Mutual Casualty Company • American Motorists Insurance Company
American Manufacturers Mutual Insurance Company • American Protection Insurance Company

Long Grove, IL 60049 • 312/540-2000

October 12, 1983

Ms. Barbara Boehm, Vice President
Policyowner Service Department
Charter Security Life Insurance Company (New York)
720 Fifth Avenue
New York, New York 10019

Dear Ms. Boehm:

RE: DENNIS DIMON
CONTRACT NO. 83408153
OUR FILE NO. 399 LM 156125 Z

In reponse to your October 14, 1983 I reject and return
herewith the Supplementary Agreement and General Provisions
attached thereto. The original annuity policy will be re-
tained in the files of American Motorists Insurance
Company and considered valid and enforceable.

Very truly yours,

AMERICAN MOTORISTS INSURANCE COMPANY

John L. Noe
Home Office Claims

JLN/lz

cc: Mr. Roger Hughes
Latti Associates, Attorneys
30-31 Union Wharf
Boston, MA 02109

cc: Mr. Robert A. Foley
Dean Witter Reynolds, Inc.
One Boston Place
Boston, MA 02108

000024

1981	NR.	PROCEEDINGS
Feb 9		Complaint filed. Affidavit of Michael B. Latti, filed. Summons issued. jr
Feb 10		Summons returned. cz
Feb 17		Marshal's service form returned and filed. sc
Mar 2		Enter the appearance of Edward P. Sowa for the deft. cz
Mar 2		Deft's answer filed. cz
May 19		Pltffs' motion to compel production of documents filed. cz
May 19		Pltff's motion to compel answers filed. cz
May 21		Pltff's motion for an order for payment of maintenance and cure filed. cz
June 5		Pltff's motion to compel production of documents is granted. sc
June 5		Pltff's motion to compel answers to interros is granted. sc
June 10		Pltff's motion for an order for payment of maintenance and cure is granted. cz
July 16		Entry of appearance of Jerome B. Spunt for deft, Jenny C. Inc. as Co-counsel filed. sc
July 23		Deft's motion for leave to amend its answer filed. sc
Aug 11		Pltff's notice to take the deposition of Errol B. Zittel filed. cz
Aug 11		Pltff's notice to take the deposition of Gary Champlin filed. cz
Aug 11		Pltff's motion to inspect, survey & photograph filed. cz
Sept 9		Deft's notice to take the deposition of Dennis Jay Dimon filed. cz
Sept 10		Enter the appearance of W. Slater Allen, Jr. filed. cz
Sept 4		Pltff's motion to inspect, survey and photograph is granted. sc
Sept 17		Deft's motion for leave to amend its answer is granted. sc
Sept 29		PRELIMINARY PRE-TRIAL ORDER re: discovery to close by March 1, 1982; trial to commence by March 10, 1982. sc
Nov 17		Deft's amended answer filed. sc
1/19/82		Deft's notice to take the deposition of Dennis Jay Dimon filed. cz
1/19/82		Deft's notice to take the deposition of Gary Champlin filed. cz
1/19/82		Deft's notice to take the deposition of Errol B. Zittel filed. cz
Feb 18		Notice to take depo of Jenny C., Inc. filed. sc
Feb 18		Notice to take depo of Gary Champlin filed. sc
Feb 18		Notice to take depo of Gary Gray filed. sc
Feb 18		Notice to take depo of Errol B. Zittel filed. sc
Mar 1		STIPULATION re: time for discovery is extended until April 15, 1982. sc
Sept 30		Notice to take depo of Gary Champlin filed. sc
Sept 30		Notice to take depo of Gary Gray filed. sc
Oct 29		Notice to take depo of Gary Gray. cz
29		Notice to take depo of Gary Champlin. cz
Dec 21		Enter the appearance of Guy J. Wells for deft. cz
1983		
Jan 3		Entry of appearance of Joseph Flannery for pltf filed. sc
Jan 28		Notice to take depo of Richard F. Learned filed. sc
Feb 2		1st day of trial -- two witnesses sworn in; four exhibits entered. sc
Feb 3		2nd day of trial -- three witnesses sworn in; 15 exhibits entered; defts m/for directed verdict is denied. sc
Feb 4		3rd day of trial; final arguments; jury charge; jurors go into deliberations
Feb 4		Verdict for pltf in amt of \$710,000.00 sc

DC 111A
(Rev. 1/75)

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO. <u>81-006</u>
Dennis Jay Dimon		Jenny C., Inc.	PAGE <u>2</u> OF <u> </u> PAGE
DATE	NR.	PROCEEDINGS	
2/14		D/judgment N.O.V.cz	
14		D/new trial or in the alternative a remittitur.cz	
14		Order: Deft and plttf shall file memo in accordance with a stipulation to be filed not later than 2/21/83.cz	
24		P/obj to deft's m/new trial.cz	
Apr 12		ORDER re: hearing before Court on April 19, 1983 at 9:00 a.m. re: settlement to be put on record.sc	
14		Affidavit of notice by W. Slater Allen, Jr.cz	
May 3		Hearing held in open court re: Mr. Decof as Guardian for Mr. Dimon; atty's fees granted.sc	
May 9		Transcript of May 3, 1983 filed.sc	
May 6		Release of deft from its agreement dated Feb 17, 1983 entered.sc	
17		Copy of Transcript and attachments placed in file.cz	
June 6		Stipulation re: dismissed w/prej., no costs.sc	

Dimon vs. Metropolitan Life

9-8-06
C.A. No.: 05-11073 WGY

William R. Mensie

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

3

EASTERN DIVISION

4

5

DENNIS DIMON,)

)

6

Plaintiffs,)

)

7

vs.) C.A. No: 05-11073 WGY

)

8

METROPOLITAN LIFE INSURANCE,)

KEMPER INSURANCE COMPANY,)

9

MORGAN STANLEY DW, INC.,)

MICHAEL B. LATTI, LATTI)

10

ASSOCIATES, and LATTI &)

ANDERSON LLP,)

11

)

Defendants.)

12

13

14

The telephonic deposition of WILLIAM R.

15

MENSIE, called by the Defendant Metropolitan Life

16

Insurance for examination, pursuant to Notice, and

17

pursuant to the Rules of Civil Procedure for the United

18

States District Courts pertaining to the taking of

19

depositions, taken before Joanne M. Brogan, a Certified

20

Shorthand Reporter and a Notary Public in and for the

21

County of Cook and State of Illinois, at One Kemper

22

Drive, Long Grove, Illinois, on Thursday, 7th day of

23

September, 2006, at the hour of 9:00 o'clock a.m.

24

Dimon vs. Metropolitan Life

9-8-06
C.A. No.: 05-11073 WGY

William R. Mensie

Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2</p> <p>3 THE KAPLAN/BOND GROUP</p> <p>4 By MR. BRIAN KEANE (present telephonically)</p> <p>5 88 Black Falcon Avenue, Suite 301</p> <p>6 Boston, Massachusetts 02210</p> <p>7 (617)261-0080</p> <p>8 appeared on behalf of the Plaintiff;</p> <p>9</p> <p>10 CIAPCIAK & ASSOCIATES, P.C.</p> <p>11 By MR. PETER M. LeBLANC (present telephonically)</p> <p>12 99 Access Road</p> <p>13 Norwood, Massachusetts 02062</p> <p>14 (781)255-7401</p> <p>15 appeared on behalf of Defendant</p> <p>16 Metropolitan Life Insurance Company;</p> <p>17</p> <p>18 SULLIVAN WEINSTEIN & McQUAY, P.C.</p> <p>19 By MS. SANDRA SUE McQUAY (present telephonically)</p> <p>20 Two Park Plaza</p> <p>21 Boston, Massachusetts 02116-3902</p> <p>22 (617)348-4355</p> <p>23 appeared on behalf of Defendant</p> <p>24 Morgan Stanley DW, Inc.;</p> <p>15</p> <p>16 TODD & WELD, LLP</p> <p>17 By MR. JOHN E. DeWICK (present telephonically)</p> <p>18 28 State Street</p> <p>19 Boston, Massachusetts 02109</p> <p>20 (617)624-4803</p> <p>21 appeared on behalf of Defendants</p> <p>22 Michael B. Latti, Latti Associates and</p> <p>23 Latti & Anderson LLP;</p> <p>24</p> <p>25 DRINKER BIDDLE & REATH, LLP</p> <p>26 By MR. TIMOTHY J. O'DRISCOLL</p> <p>27 One Logan Square, 18th and Cherry Streets</p> <p>28 Philadelphia, Pennsylvania 19103-6969</p> <p>29 (215)988-2865</p> <p>30 appeared on behalf of Defendant</p> <p>31 Kemper Insurance Company.</p> <p>32 PRECISE REPORTING SERVICE, P.C.</p>	<p>1 MR. LeBLANC: Do counsel want to enter into the</p> <p>2 usual stipulation waiving the notary that's required in</p> <p>3 Illinois and reserving objections except as to form until</p> <p>4 trial?</p> <p>5 MR. O'DRISCOLL: That's fine with me.</p> <p>6 MR. DeWICK: I'm fine with those stipulations.</p> <p>7 MR. KEANE: I'm fine with those stipulations as</p> <p>8 well.</p> <p>9 MR. LeBLANC: Has the witness been sworn?</p> <p>10 (Witness sworn.)</p> <p>11 WILLIAM R. MENSIE,</p> <p>12 called as a witness on behalf of the Defendant</p> <p>13 Metropolitan Life Insurance, having been first duly</p> <p>14 sworn, was examined and testified as follows:</p> <p>15 DIRECT EXAMINATION</p> <p>16 BY MR. LeBLANC:</p> <p>17 Q This is Peter LeBlanc. State your full name</p> <p>18 for the record, sir.</p> <p>19 A William Randolph Mensie.</p> <p>20 Q Spell your last name, please.</p> <p>21 A M-e-n-s-i-e.</p> <p>22 Q Are you an employee of Kemper Insurance?</p> <p>23 A I am.</p> <p>24 Q Okay. And what's your position with Kemper?</p> <p>PRECISE REPORTING SERVICE, P.C.</p>
Page 3	Page 5
<p>1 I N D E X</p> <p>2 WILLIAM R. MENSIE</p> <p>3 PAGES</p> <p>4</p> <p>5 MR. LeBLANC:</p> <p>6 DIRECT EXAMINATION 4 - 214</p> <p>7 REDIRECT EXAMINATION 253 - 274</p> <p>8 FURTHER REDIRECT EXAMINATION 276 - 278</p> <p>9</p> <p>10 MS. McQUAY:</p> <p>11 CROSS EXAMINATION 214 - 240</p> <p>12</p> <p>13 MR. DeWICK:</p> <p>14 CROSS EXAMINATION 240 - 244</p> <p>15 RECROSS EXAMINATION 274 - 275</p> <p>16</p> <p>17 MR. KEANE:</p> <p>18 CROSS EXAMINATION 244 - 252</p> <p>19</p> <p>20 INDEX TO EXHIBITS</p> <p>21</p> <p>22 EXHIBIT NO. DESCRIPTION PAGE</p> <p>23</p> <p>24</p> <p>1 October 10, 1983 Letter 53</p> <p>2 Application 80</p> <p>3 Annuity Application 83</p> <p>4 Annuity Application 86</p> <p>5 April 18, 1983 Memorandum 127</p> <p>6 November 8, 1983 Memorandum 132</p> <p>7 August 12, 1983 Letter 196</p> <p>8 March 10, 1983 Jerome B. Spunt 199</p> <p>9 Letter</p> <p>10 March 10, 1983 Medway Marine 204</p> <p>11 Letter</p> <p>12 General Release 218</p> <p>13 Single Premium Deferred Annuity 223</p> <p>14</p> <p>PRECISE REPORTING SERVICE, P.C.</p>	<p>1 A Liability claim consultant.</p> <p>2 Q Okay. And what does that mean? What do you</p> <p>3 do?</p> <p>4 A I handle claims, liability claims, from the</p> <p>5 Long Grove office facility.</p> <p>6 Q Okay. And can you tell me a little bit about</p> <p>7 what a liability claim might be?</p> <p>8 A A claim where a third party has instituted an</p> <p>9 action against a Kemper insured.</p> <p>10 Q Okay. And does that also involve when third</p> <p>11 parties institute actions against Kemper itself?</p> <p>12 A It could.</p> <p>13 Q Okay. What do you understand the allegations</p> <p>14 made against Kemper in this case to be?</p> <p>15 A I understand -- stood that an action was</p> <p>16 initiated against Kemper alleging misrepresentation and</p> <p>17 breach of contract.</p> <p>18 Q Okay. Do you understand that you're here to</p> <p>19 testify on behalf of Kemper Insurance?</p> <p>20 A Yes.</p> <p>21 Q And that you're testifying as the</p> <p>22 representative of Kemper Insurance?</p> <p>23 A Yes.</p> <p>24 Q How long have you been employed with Kemper?</p> <p>PRECISE REPORTING SERVICE, P.C.</p>

Dimon vs. Metropolitan Life

9-8-06

William R. Mensie

C.A. No.: 05-11073 WGY

Page 6	Page 8
<p>1 A A little over six years.</p> <p>2 Q And what was your prior employment before you</p> <p>3 started working for Kemper?</p> <p>4 A I worked for Great American Insurance Company.</p> <p>5 Q Okay. And what did you do there?</p> <p>6 A Litigation manager.</p> <p>7 Q And what are the job duties of a litigation</p> <p>8 manager?</p> <p>9 A I managed the regional litigation for Great</p> <p>10 American Insurance, cases that were in suit.</p> <p>11 Q Okay. Was Great American Insurance an</p> <p>12 independent insurance company, or were they owned by</p> <p>13 somebody?</p> <p>14 A The corporate structure at the time was private</p> <p>15 ownership.</p> <p>16 Q Since then do you know what the corporate</p> <p>17 structure is?</p> <p>18 A I do not.</p> <p>19 Q Prior to being a liability claims consultant</p> <p>20 with Kemper what other positions, if any, did you have</p> <p>21 there?</p> <p>22 A Client service representative, senior liability</p> <p>23 analyst.</p> <p>24 Q Did either of those positions require that you</p> <p>PRECISE REPORTING SERVICE, P.C.</p>	<p>1 deposition prior to today?</p> <p>2 A Yes.</p> <p>3 Q And what was the name of that company?</p> <p>4 A Great American.</p> <p>5 Q Anyone else?</p> <p>6 A Providence Washington.</p> <p>7 Q Anyone else?</p> <p>8 A None come to mind at this time.</p> <p>9 Q Okay. When you testified on behalf of Great</p> <p>10 American and Providence Washington, were you employees of</p> <p>11 those companies at the time -- were you an employee of</p> <p>12 those companies?</p> <p>13 A I've testified on behalf of Providence</p> <p>14 Washington after having been an employee of that company,</p> <p>15 and also during the course of my employment there I've</p> <p>16 testified on behalf of Great American while as an</p> <p>17 employee.</p> <p>18 Q Just so I have it straight, this is the first</p> <p>19 time you've testified as a representative of Kemper; is</p> <p>20 that correct?</p> <p>21 A Correct.</p> <p>22 Q Okay. When I use the term Kemper or Kemper</p> <p>23 Insurance or Kemper Group, are those all the same thing</p> <p>24 in your mind?</p> <p>PRECISE REPORTING SERVICE, P.C.</p>
Page 7	Page 9
<p>1 do any direct sales of Kemper products?</p> <p>2 A No.</p> <p>3 Q Have you ever sold annuity or insurance</p> <p>4 products?</p> <p>5 A No.</p> <p>6 Q Have you ever testified before?</p> <p>7 A Yes.</p> <p>8 Q Okay. And have you ever testified in a</p> <p>9 deposition before?</p> <p>10 A Yes.</p> <p>11 Q How many times?</p> <p>12 A Don't recall specifically, more than five, less</p> <p>13 than 25.</p> <p>14 Q Did you ever testify on behalf of Kemper</p> <p>15 Insurance in your capacity at Kemper Insurance before at</p> <p>16 a deposition?</p> <p>17 A No, I don't recall having done so.</p> <p>18 Q Okay. In the five to 25 depositions you've</p> <p>19 testified at in the past were they as representatives of</p> <p>20 a company or on a personal basis?</p> <p>21 A Not sure what you mean by "on a personal</p> <p>22 basis."</p> <p>23 Q Let's break it down. Did you testify on behalf</p> <p>24 of a company, as a company representative, at any</p> <p>PRECISE REPORTING SERVICE, P.C.</p>	<p>1 A For the purposes of our discussion, yes.</p> <p>2 Kemper is a business trade name.</p> <p>3 Q So when I say Kemper or Kemper Insurance or</p> <p>4 Kemper Group, do you understand that I'm asking questions</p> <p>5 about both this case and the entity that's being sued in</p> <p>6 this case?</p> <p>7 A Yes.</p> <p>8 Q Okay. What were the subject matter of the</p> <p>9 other depositions you testified in on behalf of employer,</p> <p>10 former or at the time present employers?</p> <p>11 A There were a variety of subject matters. It</p> <p>12 runs the gamut, anything from an automobile accident to a</p> <p>13 workers' compensation case.</p> <p>14 Q Did you ever testify on an annuity?</p> <p>15 A No.</p> <p>16 Q Was that no?</p> <p>17 A That's correct. No.</p> <p>18 Q Have you ever worked in your professional life</p> <p>19 for any of the prior insurance companies you were</p> <p>20 employed by or your current employer on an annuity</p> <p>21 dispute?</p> <p>22 MR. O'DRISCOLL: Could you rephrase that</p> <p>23 question. I wasn't sure that I understood it actually,</p> <p>24 Peter. It's Tim O'Driscoll.</p> <p>PRECISE REPORTING SERVICE, P.C.</p>

Dimon vs. Metropolitan Life

9-8-06

William R. Mensie

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<p style="text-align: right;">Page 10</p> <p>1 BY MR. LeBLANC:</p> <p>2 Q Let's see if the witness understood it.</p> <p>3 A No, I did not. I'm not really sure when you --</p> <p>4 dispute, are you speaking of matters that were in</p> <p>5 litigation involving annuities?</p> <p>6 Q Speaking of any dispute regarding an annuity</p> <p>7 whether it was in litigation or not.</p> <p>8 A And the question is have I -- can you restate</p> <p>9 the question, please.</p> <p>10 Q Sure. Have you ever worked on a case, a claim,</p> <p>11 or any other issue related to an annuity or an annuity</p> <p>12 dispute?</p> <p>13 A I have worked on a claim involving annuities.</p> <p>14 I do not recall any specific claim involving a dispute</p> <p>15 involving an annuity.</p> <p>16 Q Okay. And what -- when you say you worked on a</p> <p>17 claim involving an annuity, what was the subject matter</p> <p>18 of that claim?</p> <p>19 A During the course of my career I've seen, you</p> <p>20 know, dozens of claims that involve annuities, so when</p> <p>21 asked the question whether or not I've worked on a claim</p> <p>22 involving an annuity, I've been involved in claims where</p> <p>23 annuities have been a part of that claim.</p> <p>24 Q Okay. Did you ever work on a claim that</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 12</p> <p>1 and the annuity that was issued in this case.</p> <p>2 Q Okay. More specific as to what documents you</p> <p>3 actually reviewed?</p> <p>4 A I reviewed the annuity policy, various</p> <p>5 memorandums that were a part of the claim file concerning</p> <p>6 the annuity, as well as the documents that were produced</p> <p>7 during the course of the discovery.</p> <p>8 Q And when you say "claim file," is there a set</p> <p>9 of identifying numbers that you can point to that would</p> <p>10 point me to the claim file?</p> <p>11 A Claim file reference number is -- there is a</p> <p>12 claim file reference number, that's correct.</p> <p>13 Q And what is that number?</p> <p>14 A 399 LM 106125.</p> <p>15 Q Is that an internal Kemper number?</p> <p>16 A Yes.</p> <p>17 Q Do you have the documents that were recently</p> <p>18 disclosed by Mr. O'Driscoll in this case, No. K-005</p> <p>19 through K-0128?</p> <p>20 A Yes.</p> <p>21 Q If you look at document K-0005 under the title</p> <p>22 Structured Settlement Check-Off Sheet.</p> <p>23 A I have it before me.</p> <p>24 Q If you look at the file number there, it gives</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 11</p> <p>1 involved a dispute as to the terms of an annuity?</p> <p>2 A During the course of working on a claim</p> <p>3 involving an annuity, I don't know that I would qualify</p> <p>4 it as a dispute as such, but during the course of</p> <p>5 negotiation the terms of the annuity could be at issue;</p> <p>6 but I wouldn't qualify that as a dispute. So in answer</p> <p>7 to your question I'd have to say no, if I understood the</p> <p>8 question correctly.</p> <p>9 Q Claims that you worked on regarding annuities,</p> <p>10 were they claims prior to or after the issuance of the</p> <p>11 annuity?</p> <p>12 A I have not been involved in any claims where</p> <p>13 there has been a dispute after the issuance of the</p> <p>14 annuity.</p> <p>15 Q Do you know if Kemper has ever been involved</p> <p>16 with a claim regarding a dispute as the terms of an</p> <p>17 annuity after the annuity was issued?</p> <p>18 A No.</p> <p>19 Q No, Kemper has never been involved in that type</p> <p>20 of issue, or you don't know?</p> <p>21 A I do not know.</p> <p>22 Q What did you do to prepare for today's</p> <p>23 deposition?</p> <p>24 A Reviewed the documents relating to the lawsuit</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 13</p> <p>1 me the same number as your claim file reference number</p> <p>2 except it has a Z at the end or what appears to be a Z.</p> <p>3 Do you see that?</p> <p>4 A That's correct.</p> <p>5 Q And why is that, if you know?</p> <p>6 A The Z signified the type of file that it</p> <p>7 involved.</p> <p>8 Q Okay. And what is the type of file that's</p> <p>9 involved by marking it with a Z?</p> <p>10 A Z level files were handled at a home office</p> <p>11 level.</p> <p>12 Q And what does that mean?</p> <p>13 A The level of the adjuster's experience that</p> <p>14 would be involved in handling a case would be changed.</p> <p>15 Q Is Z the highest level?</p> <p>16 A Yes.</p> <p>17 Q And what are the levels below Z?</p> <p>18 A The other qualifier would be an X file; and</p> <p>19 below that, there is nothing below that. It's an X or a</p> <p>20 Z.</p> <p>21 Q Okay. And what makes a file a Z file?</p> <p>22 A The managing person who would have signed the</p> <p>23 file could have qualified it as such because of the</p> <p>24 seriousness of the injury. That manager's discretion</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 14</p> <p>1 might have dictated that there were circumstances that</p> <p>2 they wanted a person who had a more specialized</p> <p>3 understanding of a claim to be involved in the case and</p> <p>4 so it was qualified as such.</p> <p>5 Q Okay. And who is the manager on this claim or</p> <p>6 on this case?</p> <p>7 A 1983 looks to me it's K. Lemhoefer.</p> <p>8 Q And where did you get that information?</p> <p>9 A It appears on a memorandum that's amongst the</p> <p>10 claim file material.</p> <p>11 Q And can you tell me what the K number for that</p> <p>12 memorandum is?</p> <p>13 A It appears on K-0006.</p> <p>14 Q Okay. Mr. Mensie, I'd ask you not to refer to</p> <p>15 documents unless I ask you to or unless you tell me</p> <p>16 you're doing that, okay?</p> <p>17 A Okay.</p> <p>18 Q If you look at K-0006 where it says K.</p> <p>19 Lemhoefer, Division Claims Summit.</p> <p>20 A Okay.</p> <p>21 Q What does a division claims mean?</p> <p>22 A In 1983 it was a divisional claim unit, an</p> <p>23 operation, and it was housed in Summit.</p> <p>24 Q Is that a town or county or building?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 16</p> <p>1 BY MR. LeBLANC:</p> <p>2 Q And who assigned you?</p> <p>3 A By virtue of the -- my job responsibilities,</p> <p>4 the lawsuit came in. It falls within my jurisdiction,</p> <p>5 and I'm handling the claim.</p> <p>6 Q Were you assigned based on any particular</p> <p>7 criteria?</p> <p>8 A More geographic than a specific criteria of</p> <p>9 such.</p> <p>10 Q And when you say "geographic," is there a</p> <p>11 region that if cases come out of that region, they go to</p> <p>12 you?</p> <p>13 A Yeah, that's one of the criterias for the cases</p> <p>14 that I'm involved in is by location of the --</p> <p>15 Q Criteria?</p> <p>16 A Pardon me.</p> <p>17 Q What are the other criterias? You said that</p> <p>18 was one criteria.</p> <p>19 A I'm also involved in international claims, and</p> <p>20 I have responsibility for annuities.</p> <p>21 Q And when you said "responsibility for</p> <p>22 annuities," what does that mean?</p> <p>23 A If a claim involves an annuity where Kemper is</p> <p>24 involved in, the documents are housed here in Long Grove,</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 15</p> <p>1 A Summit, New Jersey I believe.</p> <p>2 Q Now, in preparation for today's deposition, Mr.</p> <p>3 Mensie, did you review any documents that you know or</p> <p>4 have reason to believe weren't disclosed?</p> <p>5 MR. O'DRISCOLL: Well, I'll object to that to</p> <p>6 the extent that they were the documents -- if there were</p> <p>7 any documents as to which we've claimed attorney-client</p> <p>8 and/or work product privilege.</p> <p>9 MR. LeBLANC: I'd ask the witness to answer the</p> <p>10 question then.</p> <p>11 THE WITNESS: Not to my knowledge.</p> <p>12 BY MR. LeBLANC:</p> <p>13 Q And Mr. Mensie, why were you chosen to be the</p> <p>14 witness for Kemper today?</p> <p>15 MR. O'DRISCOLL: I'll interject at that point.</p> <p>16 I would object to the question to the extent that that</p> <p>17 would implicate any communications protected by the</p> <p>18 attorney-client privilege, any communications between</p> <p>19 myself and Mr. Mensie.</p> <p>20 But to the extent that the witness knows</p> <p>21 and would not implicate any of those communications,</p> <p>22 Mr. Mensie, you may answer.</p> <p>23 THE WITNESS: I'm assigned to handle this</p> <p>24 litigation.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 17</p> <p>1 that data center, I'm charged with keeping that data</p> <p>2 center updated, locating annuities. There's a lot of</p> <p>3 activity nowadays involving annuities that are being</p> <p>4 transferred. I'm involved in that as well.</p> <p>5 Q And what does it mean to have an annuity</p> <p>6 transferred in your --</p> <p>7 A There are vendors who are purchasing the</p> <p>8 benefit streams from the annuitant, and they are</p> <p>9 having -- by court orders allowing that to take place, so</p> <p>10 there's a ton of activity along those lines.</p> <p>11 Q Did you speak with anyone or have you spoken</p> <p>12 with anyone at Kemper regarding the Dimon versus MetLife</p> <p>13 case?</p> <p>14 MR. O'DRISCOLL: I would object to the extent</p> <p>15 that Mr. Mensie, if he has, spoken with any counsel at</p> <p>16 Kemper, but otherwise Mr. Mensie may respond.</p> <p>17 THE WITNESS: During the course of handling</p> <p>18 this claim I'm certain I've spoken with others here at</p> <p>19 Kemper concerning the claim.</p> <p>20 BY MR. LeBLANC:</p> <p>21 Q Okay. And who are they?</p> <p>22 A One that readily comes to mind is the clerical</p> <p>23 manager, seeking her assistance in locating the annuity.</p> <p>24 This is an older policy. Her name is Kim Skaya. That's</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 18</p> <p>1 someone that readily comes to mind.</p> <p>2 Q And how do you spell -- is it Ms. Skaya?</p> <p>3 A Yes.</p> <p>4 Q How do you spell her name?</p> <p>5 A S-k-a-y-a.</p> <p>6 Q And other than -- did I pronounce it correctly,</p> <p>7 Skaya?</p> <p>8 A Yes.</p> <p>9 Q Other than Ms. Skaya, did you speak with anyone</p> <p>10 else at Kemper?</p> <p>11 A I'm sure I have, but no one readily comes to</p> <p>12 mind. Just during the course of handling the claim,</p> <p>13 locating the claim file, locating information -- oh,</p> <p>14 another person, the HR personnel. I've had a</p> <p>15 communication to locate individuals whose names appear in</p> <p>16 this matter, last known address.</p> <p>17 Q Anyone else?</p> <p>18 A Nothing that I can think of.</p> <p>19 Q Do you have a supervisor at Kemper?</p> <p>20 A Do I?</p> <p>21 Q Yes.</p> <p>22 A I have a manager that I report to, that's</p> <p>23 correct.</p> <p>24 Q Have you reported anything regarding this case</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 20</p> <p>1 so each individual that was requested during the course</p> <p>2 of discovery I conducted a search on each of those</p> <p>3 individuals.</p> <p>4 Q Did your search yield any results?</p> <p>5 A To the extent that the records were available,</p> <p>6 yes.</p> <p>7 Q And can you tell us which individuals you</p> <p>8 discovered last known addresses for?</p> <p>9 A I don't recall, but I did relay the</p> <p>10 information.</p> <p>11 Q And who did you relay that information to?</p> <p>12 A To counsel.</p> <p>13 Q Okay. Is that Mr. O'Driscoll?</p> <p>14 A That is correct.</p> <p>15 Q Without revealing what your discussions were,</p> <p>16 just so I understand the structure at Kemper, is there --</p> <p>17 are you reporting directly to Mr. O'Driscoll or a</p> <p>18 representative of Drinker, Biddle; or is there in-house</p> <p>19 counsel that you report to and they report to</p> <p>20 Mr. O'Driscoll?</p> <p>21 MR. O'DRISCOLL: I'm not sure I understand the</p> <p>22 question. I mean I -- this is Mr. O'Driscoll. I am</p> <p>23 Mr. Mensie's attorney. I report to him. I guess I don't</p> <p>24 understand the question, if you could rephrase it for my</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 19</p> <p>1 to that person?</p> <p>2 A During the course of handling the claim,</p> <p>3 there's no formal reporting that has taken place.</p> <p>4 Q Any informal reporting?</p> <p>5 A As today I reported that I'm involved in this</p> <p>6 deposition, so I guess that would be a matter of</p> <p>7 reporting.</p> <p>8 Q Other than telling your manager that you are</p> <p>9 involved in today's deposition, have you told him</p> <p>10 anything else or her anything else about this case?</p> <p>11 A It's a he, and other than the fact that it</p> <p>12 involves a dispute regarding an annuity contract, no.</p> <p>13 Q Do you have a name of an individual in the HR</p> <p>14 department that you spoke with regarding last known</p> <p>15 addresses?</p> <p>16 A I do not recall her name.</p> <p>17 Q And whose last known addresses were you looking</p> <p>18 for?</p> <p>19 A I don't recall.</p> <p>20 Q How long ago did you conduct this search?</p> <p>21 A Sometime within the last six months.</p> <p>22 Q And how many individuals were you looking for</p> <p>23 their last known addresses?</p> <p>24 A It's in direct response to a discovery request,</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 21</p> <p>1 benefit please. I'm not sure if the witness understood</p> <p>2 it or not, but I didn't.</p> <p>3 BY MR. LeBLANC:</p> <p>4 Q Can you describe for me, Mr. Mensie, the</p> <p>5 structure at Kemper with regards to reporting your search</p> <p>6 for last known addresses or any other information you</p> <p>7 might find regarding this case to Mr. O'Driscoll?</p> <p>8 MR. O'DRISCOLL: Well, I'm going to object to</p> <p>9 that. I think that calls for privileged information.</p> <p>10 You're asking directly about communications between --</p> <p>11 how Mr. Mensie and I structure our communications between</p> <p>12 each other, so I think that's privileged; and I will</p> <p>13 instruct the witness not to answer that question.</p> <p>14 MR. LeBLANC: What the question seeks is not</p> <p>15 the communication itself but whether or not he reports to</p> <p>16 more than just one attorney.</p> <p>17 MR. O'DRISCOLL: No, no, I will instruct the</p> <p>18 witness not to answer that. How Mr. Mensie and his</p> <p>19 attorneys communicate between each other is privileged</p> <p>20 information as well as of no moment.</p> <p>21 BY MR. LeBLANC:</p> <p>22 Q Mr. Mensie, is there any other attorney other</p> <p>23 than Mr. O'Driscoll that you discussed this case with?</p> <p>24 MR. O'DRISCOLL: Objection.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p>1 BY MR. LeBLANC:</p> <p>2 Q Mr. Mensie.</p> <p>3 MR. O'DRISCOLL: Instruct the witness not to</p> <p>4 answer that question.</p> <p>5 BY MR. LeBLANC:</p> <p>6 Q Mr. Mensie, based on Mr. O'Driscoll's</p> <p>7 instruction not to answer it, are you going to refuse to</p> <p>8 answer that question?</p> <p>9 MR. O'DRISCOLL: I'll give my reason for my</p> <p>10 objecting and instructing the witness not to answer.</p> <p>11 Mr. --</p> <p>12 MR. LeBLANC: That will be fine. I'd ask the</p> <p>13 witness to answer the question first though. Is he going</p> <p>14 to refuse based on advice of counsel?</p> <p>15 MR. O'DRISCOLL: I'm going to instruct the</p> <p>16 witness not to answer the question.</p> <p>17 MR. LeBLANC: Is he going to take your</p> <p>18 instruction to the question?</p> <p>19 MR. O'DRISCOLL: Yes. Mr. LeBlanc, if we could</p> <p>20 step back for a second here. You know the attorneys that</p> <p>21 work on this file. It's myself and Kevin Golden at</p> <p>22 Drinker, Biddle. To the extent you're asking if there</p> <p>23 are any other attorneys Mr. Mensie has spoken to at</p> <p>24 Drinker, Biddle who have worked on this case, I think</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p>1 proximity where she works, you know, may have been just a</p> <p>2 verbal.</p> <p>3 Q And in communicating with the HR department</p> <p>4 about last known addresses of former Kemper employees,</p> <p>5 did they produce a report?</p> <p>6 MR. O'DRISCOLL: I'm going to object to that</p> <p>7 question. That seeks information that's potentially</p> <p>8 protected by the work product privilege. If this is</p> <p>9 information that Mr. Mensie sought to obtain during the</p> <p>10 course of this litigation, not only in anticipation of</p> <p>11 but during the course of this litigation that related to</p> <p>12 the case, that would be protected by the work product</p> <p>13 privilege. And I allowed you to ask questions as to</p> <p>14 whether there were folks that Mr. Mensie communicated</p> <p>15 with; but as far as the substance of any communications</p> <p>16 of Mr. Mensie as a representative of Kemper post filing</p> <p>17 of this lawsuit in connection with this litigation, would</p> <p>18 be protected by the work product -- representative work</p> <p>19 product privilege. And to the extent --</p> <p>20 MR. LeBLANC: We'll have to disagree on that</p> <p>21 issue. The question is whether or not they produced the</p> <p>22 report, not what was in the report. I just want to know</p> <p>23 if there's a document in existence, a report from HR to</p> <p>24 Mr. Mensie.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
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<p>1 it's clearly privileged information as well as entirely</p> <p>2 irrelevant.</p> <p>3 MR. LeBLANC: What I was asking was whether</p> <p>4 there was in-house counsel at Kemper who he has worked</p> <p>5 with.</p> <p>6 MR. O'DRISCOLL: Okay. If the question is</p> <p>7 whether there is in-house counsel that he has worked</p> <p>8 with, to the extent that's a yes or no question, then the</p> <p>9 witness may answer that.</p> <p>10 THE WITNESS: No.</p> <p>11 BY MR. LeBLANC:</p> <p>12 Q Okay. So any of your communications with any</p> <p>13 employees at Kemper would not be with attorneys; is that</p> <p>14 right?</p> <p>15 A To the extent that I have had communications</p> <p>16 with other employees at Kemper, it has not been in their</p> <p>17 capacity as if they are in fact attorneys.</p> <p>18 Q Okay. In communicating with the HR department</p> <p>19 and the clerical manager, did you send them emails or</p> <p>20 voicemails? How did you communicate with those folks?</p> <p>21 A Possibly both. My recollection is that I would</p> <p>22 have sent an email to our -- to the HR department. My</p> <p>23 communications with the clerical manager could have been</p> <p>24 by email, or it may have been just because of the</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p>1 MR. O'DRISCOLL: I'll allow the witness to</p> <p>2 answer that question.</p> <p>3 THE WITNESS: There's no report. I received a</p> <p>4 response with the addresses that I produced to Mr.</p> <p>5 O'Driscoll.</p> <p>6 BY MR. LeBLANC:</p> <p>7 Q Okay. Well, what form did the response come</p> <p>8 in?</p> <p>9 MR. O'DRISCOLL: Objection, instruct the</p> <p>10 witness not to answer that.</p> <p>11 BY MR. LeBLANC:</p> <p>12 Q Was it a written report?</p> <p>13 MR. O'DRISCOLL: If I may just object to this</p> <p>14 question to the extent on a number of grounds.</p> <p>15 Mr. Mensie has already testified that he does have last</p> <p>16 known addresses of some individuals. So I don't see what</p> <p>17 the further relevance of the line of questioning would</p> <p>18 be; and also to the extent that it goes into the</p> <p>19 substance of the communications, I do think that's</p> <p>20 protected by the work product privilege.</p> <p>21 MR. LeBLANC: Mr. Mensie's prior testimony is he had</p> <p>22 no recollection of the results. If there's a report that</p> <p>23 would refresh his recollection, then we're entitled to</p> <p>24 use that since he told us there are results. Mr. Mensie</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 26</p> <p>1 further testified that he relayed that information to his 2 attorney. We need to know whether or not all the 3 information Mr. Mensie received was relayed to his 4 attorney and then relayed to us. That's the basis of the 5 question. 6 MR. O'DRISCOLL: Well, there has been no 7 discovery request for last known addresses of any 8 individuals, just so we're all clear. 9 MR. LeBLANC: There is a disclosure 10 requirement. 11 MR. O'DRISCOLL: Well, the disclosure 12 requirements have been met. 13 MR. LeBLANC: And that's what I'm trying to 14 find out here: What individuals do they look for last 15 known addresses and on which individuals were they 16 successful. 17 MR. O'DRISCOLL: Well, I think Mr. Mensie has 18 testified he doesn't remember what individuals he 19 searched for the last known addresses for. 20 MR. LeBLANC: Exactly, and that's why I need to 21 know whether the response he received from HR was written 22 or verbal. 23 BY MR. LeBLANC: 24 Q Mr. Mensie, can you tell me? PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 28</p> <p>1 disclosure obligation that Mr. LeBlanc referred to, but 2 the fact this individual is here testifying not simply as 3 an individual but as Kemper's representative; and, 4 therefore, I think he cannot merely say I don't remember. 5 I mean he has an obligation in fact to provide the 6 information particularly if it's available to him in 7 documentary form. 8 MR. O'DRISCOLL: well, Mr. Mensie has testified 9 that he doesn't remember what individuals' addresses he 10 looked for. 11 MS. McQUAY: But there is -- he's also 12 testified there is a document that reflects that 13 information, and I think that he has an obligation to 14 provide it. 15 MR. O'DRISCOLL: No, I disagree he has any 16 obligation to provide it. There's been no discovery 17 request for it. 18 MS. McQUAY: He certainly as the Kemper 19 30(b)(6) witness has an obligation to refresh his memory 20 so that he can testify to it. 21 MR. O'DRISCOLL: No, I disagree. If there had 22 been a discovery request for that information, then it 23 would be a different situation, but there has been no 24 such discovery request. PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 27</p> <p>1 MR. O'DRISCOLL: The question is whether it was 2 written or verbal? 3 MR. LeBLANC: Yes. 4 THE WITNESS: Written. 5 BY MR. LeBLANC: 6 Q And when did you receive that report, that 7 response? 8 A Shortly after the request was made, so it's 9 within at least three months ago but not more than six 10 months ago, so sometime between -- I think if my 11 recollection is correct it was in February or March of 12 '06. 13 Q And you have no recollection of what the 14 results of that response was at this time? 15 A The last known addresses were provided. 16 Q But you have no recollection at this time of 17 what those last known addresses were? 18 A I do not recall what they were, no. 19 MR. O'DRISCOLL: That's fine. For the record 20 again I'd like to state just so we're all clear there's 21 been no discovery request for last known addresses of any 22 individuals propounded upon Kemper. 23 MS. McQUAY: I'd like to interject on that 24 point if I may. Not only has there been either the PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 29</p> <p>1 MS. McQUAY: I'll disagree then because there 2 is a discovery request being purportedly fulfilled right 3 now, and that is for a 30(b)(6) most knowledgeable 4 witness on the part of Kemper to testify. 5 MR. O'DRISCOLL: Yes, and there has been no 6 request to produce any additional documents at this 7 deposition. 8 MS. McQUAY: He doesn't have to produce a 9 document, but he has to testify regarding the contents of 10 it; and if he needs to look at it to refresh his memory, 11 he should do so. 12 MR. O'DRISCOLL: Well, he's testified that he 13 has no recollection of it. 14 MR. DeWICK: This is Jed DeWick. I'd also like 15 to go on the record just that I don't think it can be 16 disputed that the initial disclosure requirement requires 17 the addresses of folks with information, so to the extent 18 that we do not have the addresses of people with 19 discoverable information from Kemper, I am formally 20 requesting that at this point on the record. 21 MR. O'DRISCOLL: Yes, I don't believe that the 22 initial disclosure requirement is that if we're not 23 intending to use any individuals as witnesses. Having 24 said that, I think we can circumvent this whole PRECISE REPORTING SERVICE, P.C.</p>

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<p>1 conversation because if I determine that it is necessary</p> <p>2 to supplement, then I will do that. It's really not an</p> <p>3 issue.</p> <p>4 MR. LeBLANC: We'll suspend on this issue; and</p> <p>5 if we have to come back another day, we can do that.</p> <p>6 MR. O'DRISCOLL: Well, we won't be coming back</p> <p>7 for that, but I certainly am willing to discuss this</p> <p>8 issue with respect to the initial disclosures</p> <p>9 subsequently, and I'm sure we can work it out.</p> <p>10 BY MR. LeBLANC:</p> <p>11 Q Mr. Mensie, where you sit today are you in the</p> <p>12 office building you normally work in?</p> <p>13 A Yes.</p> <p>14 Q Okay. And how far away from your office are</p> <p>15 you right now?</p> <p>16 A My individual office?</p> <p>17 Q Yes.</p> <p>18 A 40 yards maybe</p> <p>19 Q Okay. And how long would it take you to go</p> <p>20 down to your office and get the report we're discussing</p> <p>21 and bring it back?</p> <p>22 MR. O'DRISCOLL: I'm going to interject because</p> <p>23 there is no obligation for him to do that, and he's not</p> <p>24 going to do that.</p> <p>PRECISE REPORTING SERVICE, P.C.</p>	<p>1 issue and move on.</p> <p>2 BY MR. LeBLANC:</p> <p>3 Q Mr. Mensie, am I pronouncing your name</p> <p>4 correctly by the way? Is it Mensie?</p> <p>5 A No, it's not. It's Mensie.</p> <p>6 Q Mensie, okay. Like M-e-n-c?</p> <p>7 A No. Like M-e-n-s, Mensie.</p> <p>8 Q Okay. Thank you, sir.</p> <p>9 When you contacted the clerical manager,</p> <p>10 Ms. Skaya, can you tell me when you made contact with her</p> <p>11 first regarding this case.</p> <p>12 A I suspect my initial contact with her would</p> <p>13 have been when the litigation was first filed.</p> <p>14 Q And what was the purpose of your initial</p> <p>15 contact with her?</p> <p>16 A To locate the annuity file.</p> <p>17 Q And did she in fact locate the annuity file?</p> <p>18 A To the extent that we had an annuity file, yes.</p> <p>19 Q Okay. And what was contained in the file she</p> <p>20 located?</p> <p>21 A Memorandum concerning the annuity</p> <p>22 circumstances, the loss facts and an outline of the</p> <p>23 stream of benefits.</p> <p>24 Q You said a word I didn't hear. It sounded like</p> <p>PRECISE REPORTING SERVICE, P.C.</p>
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<p>1 MR. LeBLANC: I would still like the witness to</p> <p>2 answer the question.</p> <p>3 BY MR. LeBLANC:</p> <p>4 Q How long would it take you to get down there,</p> <p>5 get the report and bring it back?</p> <p>6 A The length of time that it would take me to</p> <p>7 walk I guess 40 yards and return. I'm estimating I</p> <p>8 could -- five minutes, ten minutes.</p> <p>9 Q Okay. Do you know where the report is now?</p> <p>10 A I -- I think so. I mean it's -- yeah.</p> <p>11 MR. O'DRISCOLL: I'm going to interject again</p> <p>12 at this point. Any document that exists is protected by</p> <p>13 the work product privilege. There have been no discovery</p> <p>14 requests for last known address information. Some of you</p> <p>15 had indicated that you believe that there is an</p> <p>16 obligation to supplement disclosures with that</p> <p>17 information. I disagree that there is necessarily such</p> <p>18 an obligation; but, you know, we can talk about this.</p> <p>19 And if it later is determined that there is such an</p> <p>20 obligation, you know, the information will be</p> <p>21 supplemented in the form of a supplemental disclosure as</p> <p>22 other parties have used in this case. They will not be</p> <p>23 in the form of any document that Mr. Mensie has.</p> <p>24 MR. LeBLANC: Okay. We'll suspend on that</p> <p>PRECISE REPORTING SERVICE, P.C.</p>	<p>1 lost fax?</p> <p>2 A Loss, the circumstances of the accident, the</p> <p>3 loss facts.</p> <p>4 Q The loss facts, okay. If you look at the</p> <p>5 documents that I sent down as proposed exhibits on August</p> <p>6 24th, these first documents page 001 to 004, are they an</p> <p>7 accurate representation of your initial efforts to find</p> <p>8 the annuity file in this case?</p> <p>9 MR. O'DRISCOLL: He is referring to -- if I</p> <p>10 may, I'm just directing the witness to your exhibits.</p> <p>11 Mr. LeBlanc is asking regarding K-001 through K-004.</p> <p>12 THE WITNESS: Okay.</p> <p>13 MR. O'DRISCOLL: just to make sure we have the</p> <p>14 same documents here, this is the K-001 and K-002 are</p> <p>15 photocopies of a check?</p> <p>16 MR. LeBLANC: Correct.</p> <p>17 MR. O'DRISCOLL: K-003 to K-004 is a memo.</p> <p>18 THE WITNESS: The memo was contained in the</p> <p>19 annuity file.</p> <p>20 BY MR. LeBLANC:</p> <p>21 Q Okay. In that initial search the documents</p> <p>22 that have been marked as K-003 through K-004 were</p> <p>23 documents that were in the annuity file that you</p> <p>24 initially found through the clerical manager, correct?</p> <p>PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 34</p> <p>1 A I believe so, yes.</p> <p>2 Q You mentioned there were other documents. What</p> <p>3 were those other documents?</p> <p>4 A I'm not certain in what context we were</p> <p>5 speaking of other documents. What's the context of</p> <p>6 that --</p> <p>7 Q In the initial search you mentioned several</p> <p>8 documents were discovered in the annuity file.</p> <p>9 A Perhaps I misspoke. The documentations that</p> <p>10 were contained in the annuity file consisted of a</p> <p>11 memorandum concerning the loss facts and the case</p> <p>12 evaluation and the stream of payments.</p> <p>13 Q And how many pages was the loss facts</p> <p>14 memorandum?</p> <p>15 A It's a two-page memorandum.</p> <p>16 Q Is it what's been marked as K-003 and K-004?</p> <p>17 A I believe that is correct.</p> <p>18 Q In the case evaluation, how many pages was</p> <p>19 that?</p> <p>20 A It's all contained in the same memorandum.</p> <p>21 Q So when you say loss facts memo and case</p> <p>22 evaluations, those are the same documents?</p> <p>23 A It's in the same memorandum. It's in the same</p> <p>24 document.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 36</p> <p>1 after that?</p> <p>2 A Yes.</p> <p>3 Q Okay. And when was the next time?</p> <p>4 A Probably a few months later. As the litigation</p> <p>5 was progressing, it became more important to actually</p> <p>6 find the actual contract if we could, so we conducted a</p> <p>7 search for the claim file.</p> <p>8 Q Okay. When did you make your initial request</p> <p>9 of Ms. Skaya to locate documents regarding the Dimon</p> <p>10 case?</p> <p>11 A When the initial lawsuit was received.</p> <p>12 Q So how long after service of the lawsuit?</p> <p>13 A Would have been within, you know, days of</p> <p>14 having received it I requested the copy of our annuity</p> <p>15 file so that I could refer to counsel for counsel's</p> <p>16 preparation in defense of the lawsuit.</p> <p>17 Q A few months later when you went back to Ms.</p> <p>18 Skaya to look for additional documents, what documents</p> <p>19 were discovered then?</p> <p>20 A At some point we were able to locate the actual</p> <p>21 underlying claim file; and within that claim file within</p> <p>22 the last month or so we've actually uncovered the annuity</p> <p>23 contract that should have been a part of the annuity</p> <p>24 file, but it was actually housed inside the claim file.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 35</p> <p>1 Q Okay. And what about the stream of payments?</p> <p>2 A It's in the same -- it's a part of the same</p> <p>3 document. It's the document you referred to as K-003 and</p> <p>4 K-004.</p> <p>5 Q Okay. So is it your testimony here today that</p> <p>6 Kemper's initial search for documents yielded two pages?</p> <p>7 A Yes.</p> <p>8 Q Okay. So the three things you mentioned were</p> <p>9 all from the same document?</p> <p>10 A Yes.</p> <p>11 Q Did it cause you any concern or alarm that</p> <p>12 there were only two pages on an annuity claim like this?</p> <p>13 A No.</p> <p>14 Q It did not. Why not?</p> <p>15 A Not knowing what the -- not knowing why, you</p> <p>16 know, it did not contain the actual contract as it should</p> <p>17 have. I have seen other instances where that was the</p> <p>18 case. This dates back to 1983; and, you know, the</p> <p>19 methods by which they maintain records were certainly</p> <p>20 different than they are today; but having seen in these</p> <p>21 older structures the two-page outline, it didn't cause me</p> <p>22 any particular concern.</p> <p>23 Q After your initial contact with Ms. Skaya</p> <p>24 looking for documents, did you ever contact her again</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 37</p> <p>1 Q In Kemper's system is the annuity file and the</p> <p>2 claim file two separate distinct files?</p> <p>3 A When the claim file is closed, the annuity</p> <p>4 contracts are sent here to the home office and an annuity</p> <p>5 file is established, that's correct.</p> <p>6 Q And you said that within the last month a claim</p> <p>7 file was discovered?</p> <p>8 A That's correct.</p> <p>9 Q Okay. Do you know when it was discovered?</p> <p>10 A No, I do not. Within the last month or so</p> <p>11 it -- someone through their diligent efforts were able to</p> <p>12 find the claim file. we were still not certain as to how</p> <p>13 she was able to locate it.</p> <p>14 Q Was it misfiled?</p> <p>15 A I do not know how they were able to locate it.</p> <p>16 They actually through their own diligence or own efforts</p> <p>17 were able to track it down.</p> <p>18 Q And who is "she"?</p> <p>19 A One of the clerical people that works for Ms.</p> <p>20 Skaya I believe is the person who actually was able to</p> <p>21 find it. How she went about doing so I do not know.</p> <p>22 Q Do you know when you were first alerted that</p> <p>23 they found the claim file?</p> <p>24 A It was delivered to me. It appeared on my</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 38</p> <p>1 desk, and I advised counsel.</p> <p>2 Q Okay. When it was -- when it appeared on your</p> <p>3 desk, was it in an envelope or interdepartmental mail,</p> <p>4 something like that?</p> <p>5 A No. It's a very voluminous file. It contained</p> <p>6 of course -- it's the underlying -- the underlying claim</p> <p>7 file that contains all the documents relating to the</p> <p>8 underlying case which included, you know, check copies</p> <p>9 and memorandums and transcripts of testimony that took</p> <p>10 place in the underlying case and weeding through that</p> <p>11 material I located the matters relating to this</p> <p>12 litigation.</p> <p>13 Q When you say "very voluminous file," what do</p> <p>14 you mean by that?</p> <p>15 A It's probably about I guess maybe as much as</p> <p>16 seven inches thick of paperwork.</p> <p>17 Q Okay. Would that -- was the claim file</p> <p>18 specific to Mr. Dimon and his annuity, or were there</p> <p>19 other cases in that claim file?</p> <p>20 A This claim file is specific to the Dimon</p> <p>21 litigation.</p> <p>22 Q Okay. And that was discovered within a month?</p> <p>23 A Within the last, yes, within the last 30 days</p> <p>24 or so.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 40</p> <p>1 letter, transmittal letter, anything like that?</p> <p>2 MR. O'DRISCOLL: Well, I mean obviously we're</p> <p>3 getting into attorney-client privilege areas here.</p> <p>4 BY MR. LeBLANC:</p> <p>5 Q I just want to know if the letter exists, if a</p> <p>6 letter exists?</p> <p>7 MR. O'DRISCOLL: You can answer that question,</p> <p>8 Mr. Mensie.</p> <p>9 THE WITNESS: Not to my knowledge. We</p> <p>10 communicated I think by phone.</p> <p>11 BY MR. LeBLANC:</p> <p>12 Q I'm asking: Did you transmit the file, the</p> <p>13 seven inches of documents, to your attorney?</p> <p>14 A Yes, I did.</p> <p>15 Q And how did you accomplish that? What method</p> <p>16 did you use to send those documents to your attorney?</p> <p>17 A By mail.</p> <p>18 Q Okay. So, for example, the documents that I</p> <p>19 received were in PDF form. Do you know what that means?</p> <p>20 A Yes.</p> <p>21 Q Okay. So the documents you sent to your</p> <p>22 attorney were actual paper form?</p> <p>23 A That's correct.</p> <p>24 Q Okay. And you mailed those to your attorney?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 39</p> <p>1 Q Okay. And if you'd refer to K-005 through</p> <p>2 K-00128, those documents, do you have those documents in</p> <p>3 front of you?</p> <p>4 MR. O'DRISCOLL: I'm sorry. Could you say</p> <p>5 those numbers again, Peter.</p> <p>6 MR. LeBLANC: Sure. It's K-005 through K-0128.</p> <p>7 MR. O'DRISCOLL: Yes, these were the documents</p> <p>8 produced earlier this week.</p> <p>9 MR. LeBLANC: Correct.</p> <p>10 MR. O'DRISCOLL: Yes.</p> <p>11 MR. LeBLANC: Well, the day before yesterday,</p> <p>12 one business day before today.</p> <p>13 BY MR. LeBLANC:</p> <p>14 Q Were these documents in the claim file,</p> <p>15 Mr. Mensie?</p> <p>16 A Yes.</p> <p>17 Q Okay. And in addition to these documents there</p> <p>18 are many, many more documents that aren't in this</p> <p>19 disclosure; is that correct?</p> <p>20 A Yes.</p> <p>21 Q And what did you do with the seven inches of</p> <p>22 documents that you received from the clerical department?</p> <p>23 A Referred it to counsel.</p> <p>24 Q And do you have a communication to counsel, a</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 41</p> <p>1 A Yes.</p> <p>2 Q And do you know what date you mailed those on?</p> <p>3 A No.</p> <p>4 Q Did you mail them shortly after they were</p> <p>5 discovered about a month ago?</p> <p>6 A Well, I mailed them after I went through the</p> <p>7 claim file and discovered that there were documents</p> <p>8 related to the annuity within that claim file, so the</p> <p>9 claim file was received, and I actually went through it</p> <p>10 first. Once I discovered that there were documents</p> <p>11 pertaining to the annuity within that file, I alerted</p> <p>12 counsel and sent counsel the entire file.</p> <p>13 Q Okay. When you say "the entire file," you mean</p> <p>14 all seven inches of the file?</p> <p>15 A Whatever the volume of the transmittal was, but</p> <p>16 I sent him the complete claim file, yes.</p> <p>17 Q In any event, that's more than the pages we</p> <p>18 have marked K-005 through K-00 -- I'm sorry, through</p> <p>19 K-00128; is that correct?</p> <p>20 A It appears so.</p> <p>21 MR. O'DRISCOLL: Peter, if I may interject for</p> <p>22 a moment. As I say when I transmitted the</p> <p>23 correspondence, when I transmitted these documents that</p> <p>24 have been Bates stamped, we have not produced documents</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 42</p> <p>1 that have not been asked for and which also do not relate</p> <p>2 to this case such as the pleadings and briefs in the</p> <p>3 underlying claim prior to settlement of this case or the</p> <p>4 purchase of the annuity. None of that, underlying claim</p> <p>5 file documents, such as pleadings and briefs and</p> <p>6 deposition transcripts and so forth, has been requested;</p> <p>7 and, therefore, it was not produced.</p> <p>8 Also not produced, as I said in the</p> <p>9 correspondence to you the other day, were documents</p> <p>10 relating to the subsequent bad faith litigation by Kemper</p> <p>11 against the primary carrier, also for the same reasons</p> <p>12 because those documents were not requested in discovery</p> <p>13 and also they don't have anything to do with this case,</p> <p>14 just so we're clear.</p> <p>15 MR. LeBLANC: Okay. That's fair enough. I</p> <p>16 disagree with your statements to the effect that you</p> <p>17 didn't have an obligation to disclose the entire claim</p> <p>18 file, but we'll leave that as we agree to disagree I</p> <p>19 think.</p> <p>20 BY MR. LeBLANC:</p> <p>21 Q Mr. Mensie, is there any record that you have</p> <p>22 that would evidence when you transmitted these documents</p> <p>23 to your attorney?</p> <p>24 A The answer I guess is yes. I mean it was</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 44</p> <p>1 MR. LeBLANC: Is that the end of your</p> <p>2 statement?</p> <p>3 MR. O'DRISCOLL: Yes.</p> <p>4 MR. LeBLANC: Mr. O'Driscoll, I just want to</p> <p>5 make sure that I'm not being misunderstood here. I'm not</p> <p>6 implying that anyone did anything incorrectly. What I'm</p> <p>7 suggesting here is that Kemper had these documents for 30</p> <p>8 days. I got them at 4:53 on the day before the day</p> <p>9 before the deposition. I essentially had one business</p> <p>10 day to review these documents. All of us had one</p> <p>11 business day to review these documents; and at this point</p> <p>12 I'm going to suspend as to these documents and any</p> <p>13 documents that have not been disclosed by Kemper at this</p> <p>14 point.</p> <p>15 MR. O'DRISCOLL: Suspend as to these documents,</p> <p>16 you mean K through 120?</p> <p>17 MR. LeBLANC: K-005 through K-0128. Although</p> <p>18 I'm reserving my right to use them during today's</p> <p>19 deposition, I'm going to have to suspend. They were</p> <p>20 promised to me over a week ago, and I received them</p> <p>21 essentially the close of business the day before the</p> <p>22 dep --</p> <p>23 MR. O'DRISCOLL: You received them on Tuesday.</p> <p>24 With respect to suspending the deposition, Mr. LeBlanc,</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 43</p> <p>1 transmitted by overnight delivery service to expedite the</p> <p>2 matter so the answer there would be a record of the</p> <p>3 transmittal.</p> <p>4 Q If we take a break, can you go find out when</p> <p>5 that was sent?</p> <p>6 MR. O'DRISCOLL: I'm going to object on several</p> <p>7 grounds, and then I'll make a statement for the record</p> <p>8 too. Any transmittal from Mr. Mensie to me, if there</p> <p>9 were such a transmittal, would be protected by the</p> <p>10 attorney-client privilege, number one.</p> <p>11 Number two, it's not Mr. Mensie's</p> <p>12 obligation to go to his office to search out for such a</p> <p>13 document.</p> <p>14 And number three, Peter, I've been very</p> <p>15 clear with you and up front about the chronology of this.</p> <p>16 When the claim file documents were discovered, I</p> <p>17 immediately brought them to your attention. I believe it</p> <p>18 was Friday, the Friday before this deposition was</p> <p>19 originally scheduled. Because of the discovery the</p> <p>20 deposition was postponed.</p> <p>21 I received the documents that week and</p> <p>22 produced them to you on Tuesday of this week. I've been</p> <p>23 very up front about that, and I want the record to be</p> <p>24 clear about that.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 45</p> <p>1 if that was your intention, you certainly ought to have</p> <p>2 said something to me yesterday or the day before. I'm</p> <p>3 definitely not going to agree to any kind of suspension</p> <p>4 as to these documents if what you mean by suspension is</p> <p>5 that we're going to conduct another deposition.</p> <p>6 MR. LeBLANC: I'm not asking you to agree. I'm</p> <p>7 just telling you that as the taker of the deposition, I'm</p> <p>8 going to suspend on issues related to the recently late</p> <p>9 disclosed documents.</p> <p>10 MR. O'DRISCOLL: I would advise you if you</p> <p>11 intend to ask any questions, to do it now because there</p> <p>12 is not going to be another deposition. If you wanted to</p> <p>13 suspend or have more time to review these documents, you</p> <p>14 ought to have told me that yesterday or the day before.</p> <p>15 We could have postponed this deposition. You didn't do</p> <p>16 that.</p> <p>17 MR. LeBLANC: The day before? I didn't get</p> <p>18 them until close of business and --</p> <p>19 MR. O'DRISCOLL: It was 3:00 or 4:00 o'clock I</p> <p>20 think on Tuesday. You had plenty of time to call me if</p> <p>21 you thought that there wasn't enough time to review these</p> <p>22 documents. For the record there are a hundred documents.</p> <p>23 Many of these were previously produced by other parties</p> <p>24 in this litigation, and I can't imagine there's many of</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p>1 these documents that you would have any questions about, 2 so there's no just cause for you to suspend the 3 deposition in any case. 4 MR. LeBLANC: I believe you stated your case, 5 Mr. O'Driscoll. My position is we're suspending the 6 deposition as to these issues -- 7 MR. O'DRISCOLL: One more thing -- 8 MR. LeBLANC: -- my right to call the witness 9 back. 10 MR. O'DRISCOLL: No. Well, I disagree with 11 that. And one more thing in addition to there being no 12 just cause. If you did think there was just cause, you 13 should have brought it to my attention before we started 14 to conduct this deposition. 15 MR. LeBLANC: I just found out the disclosure 16 was received very late at 4:57 on the day before the day 17 before the deposition was partial at best and late. 18 MR. O'DRISCOLL: Partial -- 19 MR. LeBLANC: We're going to suspend on those 20 issues if we need to -- 21 MR. O'DRISCOLL: It was not partial at best. I 22 made it very clear in my communication that the documents 23 that were being produced were all documents that were 24 asked for during discovery. I told you exactly what was PRECISE REPORTING SERVICE, P.C.</p>	<p>1 all documents in a claim file that Mr. Mensie, the 2 witness for Kemper testified, that he gave to his 3 attorney, being you? 4 MR. O'DRISCOLL: All documents that were 5 requested in discovery in this case were disclosed, and I 6 told you exactly what was the nature of the documents 7 that were in the claim file that were not responsive to 8 the discovery requests. 9 MR. LeBLANC: I think your email of September 10 5th or Mr. Golden's email of September 5th speaks for 11 itself. 12 MR. O'DRISCOLL: It certainly does. We can 13 agree on that. 14 BY MR. LeBLANC: 15 Q In addition to the documents you received from 16 the clerical department in your initial search and the 17 documents you discovered over a month ago that are seven 18 inches thick, have you discovered any additional 19 documents? 20 MR. O'DRISCOLL: Objection. That question lacks 21 foundation. 22 MR. LeBLANC: We're reserving objections for 23 trial. 24 BY MR. LeBLANC: PRECISE REPORTING SERVICE, P.C.</p>
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<p>1 not being produced. I've reiterated that on the record 2 today. If you disagree with any of that -- 3 MR. LeBLANC: That is evidence that we 4 weren't -- all documents were not disclosed. 5 MR. O'DRISCOLL: All documents that were asked 6 for were disclosed. 7 MR. LeBLANC: In its possession were not 8 disclosed; is that correct? 9 MR. O'DRISCOLL: I'm sorry? 10 MR. LeBLANC: Would you agree all documents 11 that Kemper has in its possession were not disclosed in 12 this case? 13 MR. O'DRISCOLL: All documents to the discovery 14 request in this case were disclosed. 15 MR. LeBLANC: Okay. But not all documents? 16 MR. O'DRISCOLL: All documents? 17 MR. LeBLANC: Yes. 18 MR. O'DRISCOLL: In the universe of documents? 19 All documents that Kemper had an obligation to disclose, 20 that is, that were asked for in discovery in this case, 21 were disclosed. Did Kemper disclose all of its documents 22 in all of its offices? No, we can agree it didn't do 23 that. 24 MR. LeBLANC: Can we agree it didn't disclose PRECISE REPORTING SERVICE, P.C.</p>	<p>1 Q Mr. Mensie, can you answer? 2 MR. O'DRISCOLL: I object to the form of the 3 question, lack of foundation. It's also a compound 4 question. 5 BY MR. LeBLANC: 6 Q Mr. Mensie, did you understand the question? 7 MR. O'DRISCOLL: Do you want to repeat the 8 question or ask the court reporter to read it back? 9 MR. LeBLANC: Let's ask the deponent if he 10 understands the question first. 11 BY MR. LeBLANC: 12 Q Mr. Mensie? 13 A I believe I do. 14 Q Can you answer it then, please. 15 A The answer would be no. 16 Q Okay. So other than those initial two pages, 17 what has been marked as K-003 and K-004, and K-005 18 through K-0128, to your knowledge there are no additional 19 documents in Kemper's possession that should be or have 20 been disclosed? 21 A To my knowledge and understanding the 22 documents, all documents related to the claim file and 23 the annuity file, have been produced and given to counsel 24 for his review. PRECISE REPORTING SERVICE, P.C.</p>

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<p>1 Q Okay. Can you tell me in the annuity file how</p> <p>2 many pages were in that file?</p> <p>3 A I believe it were just the two sheets. The</p> <p>4 memorandum was the only thing that we initially located.</p> <p>5 Q That was the entire contents of the annuity</p> <p>6 file?</p> <p>7 A That's correct.</p> <p>8 Q And then later when you found the claim file,</p> <p>9 that was the seven inches -- roughly seven inches of</p> <p>10 documents?</p> <p>11 A The claim file contained the underlying --</p> <p>12 documents related to the underlying lawsuit as well as</p> <p>13 documents relating to the actual annuity, that is</p> <p>14 correct.</p> <p>15 Q At your review of the claim file, did you</p> <p>16 separate documents from the claim file into two separate</p> <p>17 piles?</p> <p>18 A Did I separate documents, is that the question?</p> <p>19 Q Yes.</p> <p>20 A No, I did not separate any documents.</p> <p>21 Q Okay. So you took the seven inches of</p> <p>22 documents you had, you sent them to your attorney; is</p> <p>23 that correct?</p> <p>24 A I took the entire claim file and submitted it</p> <p>PRECISE REPORTING SERVICE, P.C.</p>	<p>1 today's deposition related to what Kemper's policy was in</p> <p>2 1983 regarding retention of documents?</p> <p>3 A Yes, I read the claim -- reviewed through the</p> <p>4 file material to try to understand what the policy may</p> <p>5 have been.</p> <p>6 Q And what did you discover?</p> <p>7 A I wasn't able to understand -- well, I wasn't</p> <p>8 able to understand much in terms of why that contract</p> <p>9 hadn't been sent to the annuity file. Other than the</p> <p>10 document -- I seem to recall there was documentation that</p> <p>11 the person who was handling the file had in fact sent a</p> <p>12 memorandum that the contract was being retained in the</p> <p>13 claim file, so without having looked at the claim file,</p> <p>14 would have had no way of knowing that. So he makes it</p> <p>15 clear he sent the contract to the claim file.</p> <p>16 Q Okay. And who makes it clear?</p> <p>17 A The person whose memorandum I'm recalling, a</p> <p>18 fellow by the name of Mr. Noe.</p> <p>19 Q And in that stack of documents K-005 through</p> <p>20 K-0128 can you point to the document where Mr. Noe makes</p> <p>21 it clear that the annuity contract or annuity documents</p> <p>22 were to be sent to the claim file?</p> <p>23 MR. O'DRISCOLL: Are you referring to --</p> <p>24 THE WITNESS: I'll continue to search for it.</p> <p>PRECISE REPORTING SERVICE, P.C.</p>
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<p>1 to counsel.</p> <p>2 Q Okay. You said that you reviewed the claim</p> <p>3 file before you did that?</p> <p>4 A I looked through the claim file before it was</p> <p>5 submitted, yes.</p> <p>6 Q And for what purpose did you look through the</p> <p>7 claim file before it was submitted?</p> <p>8 A I was trying to find any documents related to</p> <p>9 the annuity.</p> <p>10 Q Okay. And did you find documents related to</p> <p>11 the annuity?</p> <p>12 A Yes.</p> <p>13 Q And did you at any time estimate how many pages</p> <p>14 in that seven inches of claim file were related to the</p> <p>15 annuity?</p> <p>16 A No.</p> <p>17 Q You never guesstimated how many pages?</p> <p>18 A I think I said no.</p> <p>19 Q Did you ever guesstimate how thick the related</p> <p>20 documents would be in terms of whether there are one,</p> <p>21 two, three, four, five, six, seven inches of documents</p> <p>22 related to this case?</p> <p>23 A I did not.</p> <p>24 Q Okay. Did you do anything to prepare for</p> <p>PRECISE REPORTING SERVICE, P.C.</p>	<p>1 I seem to recall having read that in one of the</p> <p>2 memorandums.</p> <p>3 MR. LeBLANC: Actually at this time why don't</p> <p>4 we take a break while you search for that. Any</p> <p>5 objection?</p> <p>6 MR. O'DRISCOLL: No.</p> <p>7 MR. LeBLANC: Okay. Let's go off the record</p> <p>8 for a few minutes.</p> <p>9 (Whereupon a short recess was had,</p> <p>10 after which the preceding deposition</p> <p>11 continued as follows:)</p> <p>12 THE WITNESS: Okay. I've located where I</p> <p>13 recalled having seen it. It's in a letter dated October</p> <p>14 10th, 1983, to Charter Security Life insurance by John</p> <p>15 Noe, and he makes notice there that he intends to retain</p> <p>16 the original policy in the files and considers it to be a</p> <p>17 valid and enforceable contract.</p> <p>18 MR. LeBLANC: Okay. Can we have that document,</p> <p>19 which is a one-page letter, marked as Exhibit 1, please.</p> <p>20 (Exhibit No. 1 was marked for</p> <p>21 identification.)</p> <p>22 MR. LeBLANC: Just so we make sure we have the</p> <p>23 right document, my document has a Bates stamp in the</p> <p>24 corner, No. 29.</p> <p>PRECISE REPORTING SERVICE, P.C.</p>

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<p>1 MR. O'DRISCOLL: That's correct.</p> <p>2 MR. LeBLANC: Okay. Can we have that document</p> <p>3 marked as Exhibit 1, please.</p> <p>4 THE REPORTER: It's marked.</p> <p>5 MR. LeBLANC: Thank you.</p> <p>6 BY MR. LeBLANC:</p> <p>7 Q Other than this letter, was there a memorandum</p> <p>8 or memoranda that you referred to?</p> <p>9 A My recollection is -- I'm referring to that</p> <p>10 document. I recall having read it, and that's where it</p> <p>11 does appear.</p> <p>12 Q Can you refer to the document number K-0006.</p> <p>13 A It's the memorandum dated 8-16-83?</p> <p>14 Q That's correct.</p> <p>15 A Okay.</p> <p>16 Q And I'll point you to the second paragraph</p> <p>17 where it says: "Please be aware there are special</p> <p>18 procedures to be followed for handling files involving</p> <p>19 annuity settlements." Have you read that?</p> <p>20 A Yes, I've read it.</p> <p>21 Q Okay. Can you tell me what the special</p> <p>22 procedures are or were in 1983?</p> <p>23 A The procedures are that when the claim file is</p> <p>24 closed, the annuity contracts along with the settlement</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p>1 MR. O'DRISCOLL: Objection, the witness didn't</p> <p>2 testify to that.</p> <p>3 BY MR. LeBLANC:</p> <p>4 Q Do you have an idea where they came from,</p> <p>5 Mr. Mensie?</p> <p>6 A I'm not sure where they were able to locate the</p> <p>7 claim file.</p> <p>8 Q Where does Kemper store documents like claim</p> <p>9 files?</p> <p>10 A It depends, you know, claim files are stored in</p> <p>11 the office that handled the claim for a period of time</p> <p>12 and after that period of time it could be stored by an</p> <p>13 outside vendor, such as Iron Mountain, and then -- or</p> <p>14 either the records are destroyed. In this instance,</p> <p>15 well, being that it was a New York office, I know that a</p> <p>16 lot of documents were in fact lost in the World Trade</p> <p>17 Center because documents were stored at our office there</p> <p>18 as well.</p> <p>19 Q Okay. The documents related -- or the claim</p> <p>20 file that was discovered in this case if it were sent to</p> <p>21 you from an office other than one in Long Grove, would</p> <p>22 you expect that it would appear on your desk without an</p> <p>23 envelope or without any kind of box or anything?</p> <p>24 A Well, it could, yes, absolutely. You know, it</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
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<p>1 agreement were to be sent to the home office here in Long</p> <p>2 Grove where they are logged into a database, and an</p> <p>3 annuity file is established.</p> <p>4 Q And is that response inclusive of 1983, what</p> <p>5 the policy was then?</p> <p>6 A I believe -- yes, I believe it was at that time</p> <p>7 as well, and that's what he's referring to.</p> <p>8 Q Okay. That procedure wasn't followed in this</p> <p>9 case, was it?</p> <p>10 A It was not.</p> <p>11 Q Okay. And in terms of document storage, where</p> <p>12 was the claim file stored?</p> <p>13 A I do not know where they actually were able to</p> <p>14 locate the claim file.</p> <p>15 Q Does anyone at Kemper know where they were able</p> <p>16 to locate the claim file?</p> <p>17 A I backtracked and thus far have not been able</p> <p>18 to uncover how they were able to locate it.</p> <p>19 Q So you attempted to find out how they were able</p> <p>20 to locate it, but you weren't able to do that?</p> <p>21 A That's correct.</p> <p>22 Q So essentially this file, this seven inches of</p> <p>23 documents landed on your desk one day, and you have no</p> <p>24 idea where they came from?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p>1 comes in -- if it came in through the mail, it would have</p> <p>2 come through the mail. They would have opened it and</p> <p>3 delivered it to me, so it was nothing unusual about</p> <p>4 finding the claim file appear having requested it.</p> <p>5 Q Without any envelope or any indication of where</p> <p>6 it came from or how it got there?</p> <p>7 A That wouldn't have been unusual, no.</p> <p>8 Q Do you know if any documents related to this</p> <p>9 case were destroyed at any point since 1983?</p> <p>10 A I do not know. It does not appear to me that</p> <p>11 they were, but I do not know. I mean the claim file</p> <p>12 looked as though it contained the relevant documents</p> <p>13 relating to this claim.</p> <p>14 Q Did the claim file contain any letters between</p> <p>15 any of the parties, the Dimon versus Jenny C case?</p> <p>16 A There were letters in the claim file between</p> <p>17 the parties, yes.</p> <p>18 Q And do you know if any of those letters</p> <p>19 involved employees of Kemper or were addressed to or</p> <p>20 copied to employees of Kemper?</p> <p>21 A The letters would have involved employees of</p> <p>22 Kemper, yes. I mean otherwise I don't think they would</p> <p>23 be in the claim file. I mean yes.</p> <p>24 Q Okay. Do you consider John Noe to be an</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 58</p> <p>1 employee of Kemper?</p> <p>2 A He was at that time, yes.</p> <p>3 Q Can you tell me what the distinction if any is</p> <p>4 between American Motorists Insurance Company and Kemper</p> <p>5 Insurance Company?</p> <p>6 A Again Kemper is the trade name. American</p> <p>7 Motorists is actually the carrier that would have written</p> <p>8 this policy. The policy would have been issued –</p> <p>9 American Motorists is the actual carrier to which the</p> <p>10 policies could have been issued.</p> <p>11 Q So were employees of American Motorists</p> <p>12 employees of Kemper?</p> <p>13 A Yes.</p> <p>14 Q If you look at what we've marked as Exhibit 1,</p> <p>15 in the top right-hand corner you see it says Kemper</p> <p>16 Group?</p> <p>17 A Yes.</p> <p>18 Q And you also see there's a listing of what</p> <p>19 appear to be insurance companies?</p> <p>20 A That's correct.</p> <p>21 Q American Motorists Insurance Company right</p> <p>22 under that Kemper Group logo?</p> <p>23 A Yes.</p> <p>24 Q What's the exact relationship between Kemper</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 60</p> <p>1 A I think American Motorists would answer.</p> <p>2 Kemper may answer on behalf of – Kemper again is a trade</p> <p>3 name. I don't know to what degree that becomes an entity</p> <p>4 responsible.</p> <p>5 Q Are you an employee of Kemper or of American</p> <p>6 Motorists?</p> <p>7 A I am actually an employee of Lumbermen's</p> <p>8 Mutual.</p> <p>9 Q Which means you're an employee of Kemper?</p> <p>10 A Which if Kemper – Kemper being a trade name –</p> <p>11 Lumbermen's Mutual signs my checks, okay.</p> <p>12 Q But you're here testifying on behalf of Kemper?</p> <p>13 A I'm testifying on behalf of the trade name of</p> <p>14 doing business as Kemper Insurance, that's correct, or</p> <p>15 Kemper Group, that's correct.</p> <p>16 Q Are you an employee of Kemper Insurance</p> <p>17 Company?</p> <p>18 MR. O'DRISCOLL: Well, I think the witness just</p> <p>19 testified that Kemper is a trade name. It's a name under</p> <p>20 which various companies trade.</p> <p>21 BY MR. LeBLANC:</p> <p>22 Q Okay. Well, I'm curious as to whether or not</p> <p>23 this witness is a proper 30(b)(6) deponent. Is the</p> <p>24 witness a proper 30(b)(6) deponent, Mr. O'Driscoll?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 59</p> <p>1 and American Motorists?</p> <p>2 A Kemper is the trade name. American Motorists</p> <p>3 is actually the carrier.</p> <p>4 Q Is Kemper responsible for acts taken by</p> <p>5 American Motorists?</p> <p>6 MR. O'DRISCOLL: Objection to the form of that</p> <p>7 question, calls for a legal conclusion. I don't know if</p> <p>8 it's even answerable stated in that broad of a fashion;</p> <p>9 but in any event, it calls for a legal conclusion.</p> <p>10 MR. LeBLANC: Let's find out what the witness</p> <p>11 has to say.</p> <p>12 MR. O'DRISCOLL: You may answer that.</p> <p>13 THE WITNESS: I'm not sure when you say</p> <p>14 "responsible" what you mean by responsible.</p> <p>15 BY MR. LeBLANC:</p> <p>16 Q Is Kemper liable for the acts of American</p> <p>17 Motorists?</p> <p>18 MR. O'DRISCOLL: Objection, same grounds.</p> <p>19 THE WITNESS: I'd have to say I don't know in</p> <p>20 the context of which that is being asked.</p> <p>21 BY MR. LeBLANC:</p> <p>22 Q If American Motorists made a promise to provide</p> <p>23 a product, and they failed to fulfill their promise,</p> <p>24 would Kemper be responsible for that or liable for that?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 61</p> <p>1 MR. O'DRISCOLL: Yes.</p> <p>2 MR. LeBLANC: And on what basis do you say</p> <p>3 that?</p> <p>4 MR. O'DRISCOLL: Well, he is an employee of</p> <p>5 Kemper, Kemper being a trade name, name under which</p> <p>6 various companies trade who has been noticed in your</p> <p>7 notice of deposition.</p> <p>8 MR. LeBLANC: The notice of deposition asks</p> <p>9 that an employee of Defendant Kemper Insurance Company.</p> <p>10 Is Mr. Mensie an employee of Defendant Kemper Insurance</p> <p>11 Company?</p> <p>12 MR. O'DRISCOLL: Well, certainly for purposes</p> <p>13 of this lawsuit he is an agent or employee of Kemper. He</p> <p>14 is the representative with the most knowledge about this</p> <p>15 case.</p> <p>16 BY MR. LeBLANC:</p> <p>17 Q Mr. Mensie, is there any distinction as a</p> <p>18 representative of Kemper, Kemper Insurance Company or</p> <p>19 Kemper Group, is there any distinction between those</p> <p>20 three terms in your mind?</p> <p>21 A No.</p> <p>22 Q Okay. So when I say Kemper, to you that means</p> <p>23 Kemper, Kemper Insurance Company or Kemper Group; is that</p> <p>24 true?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 62</p> <p>1 A That's -- when you say Kemper, yes.</p> <p>2 Q Mr. Noe sometimes signs his letter as home</p> <p>3 office claim or lists his title as home office claim.</p> <p>4 Can you tell us what that is?</p> <p>5 A He was a part of the home office claim staff.</p> <p>6 Q That's the staff that would handle the Z files</p> <p>7 that we talked about earlier?</p> <p>8 A That's correct.</p> <p>9 Q Can you tell us what Kemper's role in the Jenny</p> <p>10 C case was?</p> <p>11 MR. O'DRISCOLL: When you say "the Jenny C</p> <p>12 case," could you be more specific.</p> <p>13 BY MR. LeBLANC:</p> <p>14 Q Well, I can ask: Is there more than one Jenny</p> <p>15 C case that the witness is aware of?</p> <p>16 A No.</p> <p>17 Q So when I say the Jenny C case, what does the</p> <p>18 witness understand that phrase Jenny C to mean?</p> <p>19 A I'm not certain.</p> <p>20 MR. O'DRISCOLL: Peter, are you referring to</p> <p>21 the underlying lawsuit, Dimon versus Jenny C, the Jenny</p> <p>22 C?</p> <p>23 MR. LeBLANC: I was, but --</p> <p>24 MR. O'DRISCOLL: Okay. All right.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 64</p> <p>1 Q Is there anyone at Kemper who would be more</p> <p>2 knowledgeable about where or when this case -- that case,</p> <p>3 was filed?</p> <p>4 A The documents are contained in the claim file.</p> <p>5 Q Okay. Which was not disclosed; is that</p> <p>6 correct?</p> <p>7 MR. O'DRISCOLL: We just went over this, Peter.</p> <p>8 MR. LeBLANC: I just want the witness to</p> <p>9 confirm as a representative of Kemper that those</p> <p>10 documents related to this bad faith litigation were not</p> <p>11 disclosed.</p> <p>12 MR. O'DRISCOLL: As I went over and as I told</p> <p>13 you in the correspondence the other day, those were never</p> <p>14 asked for, and they don't have anything to do with this</p> <p>15 case.</p> <p>16 MR. LeBLANC: Would you stipulate they weren't</p> <p>17 disclosed?</p> <p>18 MR. O'DRISCOLL: No, I don't -- I wouldn't use</p> <p>19 the term disclosed because to me that implies there was</p> <p>20 some sort of obligation to disclose them, and there</p> <p>21 wasn't.</p> <p>22 MR. LeBLANC: What term would you be</p> <p>23 comfortable with using, Mr. O'Driscoll?</p> <p>24 MR. O'DRISCOLL: Well, I would say this, Peter,</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 63</p> <p>1 BY MR. LeBLANC:</p> <p>2 Q Dimon versus Jenny C, are you aware of that</p> <p>3 case, Mr. Mensie?</p> <p>4 A If that's what you're referring to, that's</p> <p>5 fine.</p> <p>6 Q Do you know of any other case involving Jenny C</p> <p>7 or as a result of the Dimon versus Jenny C case?</p> <p>8 A As part of this same case, there was in fact a</p> <p>9 bad faith litigation against the primary carrier.</p> <p>10 Q Okay. And what was the -- who were the parties</p> <p>11 to the bad faith litigation?</p> <p>12 A The defendants in that case was home insurance.</p> <p>13 Q And who was the plaintiff?</p> <p>14 A I think it was filed on behalf of the -- I'd</p> <p>15 have to refer back to the complaint which I don't have</p> <p>16 before me, but it was filed on behalf of the Kemper</p> <p>17 companies, one of the Kemper companies. I don't know if</p> <p>18 they actually filed it in the name of the actual carrier</p> <p>19 that actually wrote the policy or not.</p> <p>20 Q Do you know where it was filed?</p> <p>21 A I don't have that in front of me, no.</p> <p>22 Q Do you know which state it was filed in?</p> <p>23 A Again I don't have the complaint in front of</p> <p>24 me.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 65</p> <p>1 you're here to depose Mr. Mensie as the 30(b)(6) witness</p> <p>2 of Kemper. I don't think this is the time or place for</p> <p>3 us to conduct discussions regarding this. If you want to</p> <p>4 discuss it afterwards, that's fine with me, but I think</p> <p>5 we ought to get on with this deposition.</p> <p>6 BY MR. LeBLANC:</p> <p>7 Q Mr. Mensie, to your knowledge were any</p> <p>8 documents related to the bad faith litigation disclosed</p> <p>9 to the other parties in the Dimon versus MetLife, et al.,</p> <p>10 case?</p> <p>11 A All documents in my possession were given to</p> <p>12 counsel. I have not seen the communication that counsel</p> <p>13 submitted to other parties relative to those documents.</p> <p>14 Q Okay. And in your capacity as the liability</p> <p>15 claims consultant, is that your current capacity with</p> <p>16 Kemper?</p> <p>17 A That's correct.</p> <p>18 Q In your capacity as a liability claims</p> <p>19 consultant is it your responsibility to make decisions</p> <p>20 regarding the litigation in this case?</p> <p>21 A Yes.</p> <p>22 Q Okay. So you would be essentially the contact</p> <p>23 person at Kemper who would make the decisions regarding</p> <p>24 what was done, what steps were taken, what strategy to</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 66</p> <p>1 use, anything like that?</p> <p>2 A With respect to the current litigation, yes.</p> <p>3 Q Do you know if anyone else at Kemper has been</p> <p>4 or would be in contact with Mr. O'Driscoll regarding this</p> <p>5 case?</p> <p>6 MR. O'DRISCOLL: Peter, we've been over this.</p> <p>7 We've been over this. I'm going to object.</p> <p>8 MR. LeBLANC: I'm not asking what the</p> <p>9 communications were. I'm just asking if anyone else made</p> <p>10 communications.</p> <p>11 MR. O'DRISCOLL: You can answer, Mr. Mensie.</p> <p>12 THE WITNESS: I do recall that a communication</p> <p>13 was sent to Mr. O'Driscoll from another party at Kemper</p> <p>14 advising Mr. O'Driscoll of the claim file being routed to</p> <p>15 his office. Other than that there was no other</p> <p>16 communication to my knowledge.</p> <p>17 BY MR. LeBLANC:</p> <p>18 Q Okay. You broke up a little bit there. Did</p> <p>19 you say another party at Kemper?</p> <p>20 A I said I recall a communication from another</p> <p>21 party at Kemper advising Mr. O'Driscoll that the claim</p> <p>22 file was enroute.</p> <p>23 Q Okay. And who was that other party?</p> <p>24 A That would have been one of the clerical staff. PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 68</p> <p>1 Jenny C case, what was Kemper's role in that case?</p> <p>2 A Kemper issued a policy that was in excess of a</p> <p>3 primary policy issued by Home Insurance.</p> <p>4 Q Okay. And what does it mean to be a policy in</p> <p>5 excess of or that was excess of?</p> <p>6 A That there was an underlying insurance cover</p> <p>7 available to this insured that must be exhausted before</p> <p>8 the application of the policy that Kemper issued.</p> <p>9 Q And who is this insured in the Dimon versus</p> <p>10 Jenny C case?</p> <p>11 A Home insurance issued the primary policy.</p> <p>12 Q Who were the insured?</p> <p>13 A The insured would have been the same.</p> <p>14 Q So Kemper insured Home Insurance?</p> <p>15 A No. I'm sorry. I didn't understand your</p> <p>16 question if that's the conclusion you drew.</p> <p>17 Q It is. So who was Kemper insuring? Who was</p> <p>18 the insured for Kemper's purposes?</p> <p>19 A Kemper's insureds were the members of the Point</p> <p>20 Judith Fishery Corporation Associates.</p> <p>21 Q Do you understand that to include the Jenny C</p> <p>22 or Jenny C Incorporated?</p> <p>23 A Jenny C was a vessel, and that would have been</p> <p>24 a vessel owned by those members. PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 67</p> <p>1 I'm not sure which party it was.</p> <p>2 Q And when did you -- did you review that</p> <p>3 communication recently?</p> <p>4 A It was by email. So it was instantly reviewed</p> <p>5 and discarded. I mean it was a simple communication.</p> <p>6 We're trying to expedite getting this material to him,</p> <p>7 and the person took it upon themselves to advise him that</p> <p>8 the file was enroute.</p> <p>9 Q And when did you see that communication?</p> <p>10 A It would have been last week I believe.</p> <p>11 Q Okay. Mr. Mensie, during our break did you</p> <p>12 review any documents other than the document I requested</p> <p>13 you find?</p> <p>14 A In order to find that document I had to look</p> <p>15 through other documents.</p> <p>16 Q Did you go anyplace during the break?</p> <p>17 A I went -- yes.</p> <p>18 Q Okay. Other than conferences with counsel and</p> <p>19 what I suspect might have been a trip to the restroom,</p> <p>20 did you go back to your office?</p> <p>21 A I did not.</p> <p>22 Q Office at Kemper?</p> <p>23 A I did not.</p> <p>24 Q Okay. Now, with reference to the Dimon versus</p> <p>PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 69</p> <p>1 Q Did you look at or review a document in</p> <p>2 concluding that the insured were the Point Judith</p> <p>3 Fisherman's Cooperative?</p> <p>4 A Did I review?</p> <p>5 Q Making that answer you just made, did you look</p> <p>6 at a document?</p> <p>7 A I've looked at the claim file.</p> <p>8 Q Okay. I'm talking about right now to refresh</p> <p>9 your recollection. Did you look at any document in</p> <p>10 answering that question?</p> <p>11 A Before me I have the exhibits.</p> <p>12 Q Okay. Can you push those to the side or give</p> <p>13 those back to Mr. O'Driscoll, please.</p> <p>14 A (Witness complies.)</p> <p>15 MR. O'DRISCOLL: For the record Mr. Mensie did</p> <p>16 not look at any document when he made that answer.</p> <p>17 MR. LeBLANC: Okay.</p> <p>18 MR. O'DRISCOLL: But I will move the documents</p> <p>19 as you have requested.</p> <p>20 MR. LeBLANC: Does Mr. Mensie have any</p> <p>21 documents in front of him at this time?</p> <p>22 MR. O'DRISCOLL: No.</p> <p>23 BY MR. LeBLANC:</p> <p>24 Q Now, what was Kemper's responsibility in light</p> <p>PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 70</p> <p>1 of the fact that they issued an excess policy in this</p> <p>2 case -- or in the Jenny C case? I'm sorry.</p> <p>3 A That is a very broad question, and without</p> <p>4 having review of the actual policy itself I can't answer</p> <p>5 what the responsibilities at Kemper would have been.</p> <p>6 Q Do you have the policy in front of you, or is</p> <p>7 it in the room with you?</p> <p>8 A No, it's not.</p> <p>9 Q Do you know if it was in the claim file?</p> <p>10 A I don't recall seeing it in the claim file</p> <p>11 either.</p> <p>12 Q Okay. Is there anyone at Kemper who would have</p> <p>13 knowledge greater than yourself of the policy requiring</p> <p>14 Kemper to do or --</p> <p>15 A Not without the actual policy before them, no.</p> <p>16 Q Does the policy exist to your knowledge?</p> <p>17 A Not to my knowledge.</p> <p>18 Q Okay. So would it be safe to say no one at</p> <p>19 Kemper would be able to answer that question, what</p> <p>20 Kemper's responsibilities were?</p> <p>21 A It would be safe to say only -- you could</p> <p>22 answer it only in its broadest terms, but the policy will</p> <p>23 contain specific obligations as to what Kemper's</p> <p>24 responsibilities were at that time.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 72</p> <p>1 MR. O'DRISCOLL: Which documents are you</p> <p>2 referring to, Peter?</p> <p>3 MR. LeBLANC: The documents the witness just</p> <p>4 mentioned would clarify his answer.</p> <p>5 BY MR. LeBLANC:</p> <p>6 Q Let me first ask: Are those documents in the</p> <p>7 room with you?</p> <p>8 A I believe so.</p> <p>9 MR. O'DRISCOLL: Yes.</p> <p>10 THE WITNESS: The ones I had before me were the</p> <p>11 ones that would clarify that answer.</p> <p>12 MR. O'DRISCOLL: As I said at the beginning,</p> <p>13 Peter, the documents available here are the exhibits that</p> <p>14 you sent to us the other week and the documents that we</p> <p>15 produced on Tuesday.</p> <p>16 MR. LeBLANC: Okay.</p> <p>17 THE WITNESS: The question was who was</p> <p>18 responsible for handling this claim file on behalf of</p> <p>19 Kemper?</p> <p>20 BY MR. LeBLANC:</p> <p>21 Q We can ask the court reporter to read the</p> <p>22 question back.</p> <p>23 (Record read as follows: Who at</p> <p>24 Kemper was responsible for handling</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 71</p> <p>1 Q Okay. Let's answer it in the broadest terms</p> <p>2 then.</p> <p>3 A If it was a liability policy, it was available</p> <p>4 to provide an insurance cover arising out of certain</p> <p>5 circumstances for which the named insured might be</p> <p>6 liable. Or the insured; it doesn't necessarily have to</p> <p>7 be the named insured. It could have also stipulated</p> <p>8 others who qualified as insureds.</p> <p>9 Q Other than issuer of the excess policy, did</p> <p>10 Kemper have any other involvement in the Jenny C -- Dimon</p> <p>11 versus Jenny C case?</p> <p>12 A Not to my knowledge.</p> <p>13 Q And at Kemper who was the person responsible</p> <p>14 for the handling or addressing the Dimon versus Jenny C</p> <p>15 case?</p> <p>16 A Was the question who -- what was the question</p> <p>17 again, sir?</p> <p>18 Q Who at Kemper was responsible for handling the</p> <p>19 Dimon versus Jenny C case?</p> <p>20 A Without the documents before me I cannot tell</p> <p>21 you that. I mean if you want the record straight, the</p> <p>22 documents do speak to that question.</p> <p>23 Q Okay. Why don't you review the documents and</p> <p>24 then give me the answer.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 73</p> <p>1 the Dimon versus Jenny C case?)</p> <p>2 THE WITNESS: The handling adjuster appears to</p> <p>3 be a Mr. Jesus LaTorre, L-a-T-o-r-r-e.</p> <p>4 BY MR. LeBLANC:</p> <p>5 Q What is a handling adjuster?</p> <p>6 A That would have been the person responsible for</p> <p>7 handling the claim file, the underlying --</p> <p>8 Q And what would be Mr. LaTorre's relationship to</p> <p>9 Mr. Noe?</p> <p>10 A Mr. Torre [sic.] would have -- I can answer</p> <p>11 that in terms of a relationship. They had different</p> <p>12 responsibilities.</p> <p>13 Q What would be Mr. LaTorre's responsibilities?</p> <p>14 A As respects to this claim file, Mr. LaTorre was</p> <p>15 the adjuster or the claim rep who was charged with the</p> <p>16 responsibility of handling the claim file. He would have</p> <p>17 investigated it and resolved the matter within his</p> <p>18 responsibilities as the person assigned to the file.</p> <p>19 Q And Mr. Noe, what are his responsibilities?</p> <p>20 A After the matter -- after there was a judgment</p> <p>21 in the matter, the case was assigned to Mr. Noe.</p> <p>22 Q Okay. And what were Mr. Noe's</p> <p>23 responsibilities?</p> <p>24 A Mr. Noe took over the file for the purposes of</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 74</p> <p>1 settling the claim after there had been a judgment.</p> <p>2 Q So prejudgment it was Mr. LaTorre; post</p> <p>3 judgment it was Mr. Noe?</p> <p>4 A That's correct.</p> <p>5 Q The information available to you, what did Mr.</p> <p>6 Noe do in this case?</p> <p>7 A Mr. Noe actually settled the claim with the</p> <p>8 plaintiff's attorney.</p> <p>9 Q And what did that entail?</p> <p>10 A The settlement entailed a lump sum payment</p> <p>11 along with a payment to -- a payment that involved the</p> <p>12 purchasing of an annuity.</p> <p>13 Q And in this case, purchasing an annuity, what</p> <p>14 does that mean?</p> <p>15 A It means that a premium was paid to a life</p> <p>16 company to provide a stream of benefits to the plaintiff.</p> <p>17 Q In practical terms who was the owner of the</p> <p>18 annuity?</p> <p>19 A The owner of the annuity is stated as -- let me</p> <p>20 refer back to the annuity, which Kemper company actually</p> <p>21 was the owner.</p> <p>22 Q Are you looking at documents again?</p> <p>23 MR. O'DRISCOLL: Do you want him to?</p> <p>24 MR. LeBLANC: I would like him to answer the</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 76</p> <p>1 available to you that would have indicated what his</p> <p>2 authority was exactly?</p> <p>3 A What his specific authority was I don't recall.</p> <p>4 My recollection is that he had the authority to settle</p> <p>5 the claim within the policy limits.</p> <p>6 Q Okay. And your recollection is based on a</p> <p>7 document you saw?</p> <p>8 A It's based upon the material that I have read.</p> <p>9 I can't speak to any specific document as such. I</p> <p>10 didn't -- my impression was that he had the authority to</p> <p>11 settle the case within his authority from what I read of</p> <p>12 the claim -- what I read of the material related to this</p> <p>13 settlement.</p> <p>14 Q Do you know if the document you read led you to</p> <p>15 that conclusion or disclosed in this case?</p> <p>16 A I believe so.</p> <p>17 Q Okay. Did you see any of those documents in</p> <p>18 the documents that were marked as K-005 through K-0128?</p> <p>19 MR. O'DRISCOLL: Mr. LeBlanc, if I may</p> <p>20 interject, certainly the questions that you're asking are</p> <p>21 appropriate, but I do not think it's appropriate to ask</p> <p>22 Mr. Mensie to go through these documents and find</p> <p>23 something that you recall seeing in there. These</p> <p>24 documents are available to all the parties; and as you</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 75</p> <p>1 question if he knows without looking at the documents.</p> <p>2 THE WITNESS: Without looking at the documents</p> <p>3 I do not know who it states is the owner of the annuity,</p> <p>4 but I believe that the contract does state an owner. It</p> <p>5 was one of the Kemper companies. I'm not sure if it --</p> <p>6 which company it actually identified.</p> <p>7 Q Mr. Mensie, I'm just going to take a few</p> <p>8 minutes to try to find the document I'm looking for, a</p> <p>9 recently disclosed document.</p> <p>10 Mr. Mensie, as the handler of the claim</p> <p>11 postjudgment, did Mr. Noe have the authority to act on</p> <p>12 behalf of Kemper Insurance Company?</p> <p>13 A Yes.</p> <p>14 Q And what was the extent of his authority; what</p> <p>15 could he do in this case?</p> <p>16 A He was assigned to negotiate a settlement with</p> <p>17 the plaintiff's attorney, and he did so.</p> <p>18 Q Was he authorized to settle the claim at all</p> <p>19 costs, or was he given guidelines to your knowledge?</p> <p>20 A What his authority level was I do not know</p> <p>21 specifically, but he certainly had the authority to</p> <p>22 settle the claim within the limits of the policy.</p> <p>23 Q Have you seen any documents in your review of</p> <p>24 the seven inches of the claim file or any other documents</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 77</p> <p>1 pointed out on occasion, Mr. Mensie is testifying from</p> <p>2 his best recollection of his review of those documents.</p> <p>3 MR. LeBLANC: The question more goes to is his</p> <p>4 recollection based on documents that weren't disclosed?</p> <p>5 THE WITNESS: Here's an example if you need</p> <p>6 something more specific. There's a memorandum, your --</p> <p>7 the document is K-0102 where Mr. Noe says he was assigned</p> <p>8 to negotiate a settlement within the \$400,000 policy</p> <p>9 limit. That to me implies he had the authority to do so.</p> <p>10 BY MR. LeBLANC:</p> <p>11 Q Okay. Did you base your last answer on this</p> <p>12 document specifically?</p> <p>13 A I will suggest -- I will state that this</p> <p>14 document reflects my understanding of what his</p> <p>15 authorities were.</p> <p>16 Q And what in this document leads you to believe</p> <p>17 that he had the authority to settle up to \$400,000?</p> <p>18 MR. O'DRISCOLL: Objection. Mr. Mensie has</p> <p>19 already testified as to what his impression is on the</p> <p>20 basis of the sentence you just read in the document,</p> <p>21 answered already.</p> <p>22 BY MR. LeBLANC.</p> <p>23 Q Mr. Mensie, could you answer my question for</p> <p>24 me?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 78</p> <p>1 A It reads: Assigned to negotiate settlement 2 within our policy limit. 3 Q Okay. Are there any other documents to your 4 recollection that would have led you to that conclusion 5 that Mr. Noe had the authority to settle within the 6 policy limits other than that document? 7 A There may – 8 MR. O'DRISCOLL: To your recollection. 9 THE WITNESS: To the best of my recollection 10 without any further independent review of the documents 11 I'd have to say this document led me to have that 12 impression. There may be other sentences such as that 13 within the context of the material that's here, but my 14 independent recollection of specifically where that might 15 be I don't recall at this time. 16 BY MR. LeBLANC: 17 Q Can you refer to document K-0107. 18 A Yes. 19 Q Do you recognize this document? 20 A I do. 21 Q Can you tell me what you understand this 22 document to be? 23 A I understand it to be the application that Mr. 24 Noe signed with respect to the purchase of the annuity. PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 80</p> <p>1 purchasing this annuity. Did they receive a stream of 2 payments? 3 A They did not. 4 Q Did they have any responsibilities to purchase 5 this annuity in your opinion? 6 A It was a part of the settlement agreement with 7 the plaintiff's attorney that we would pay \$175,000 for 8 this annuity. 9 Q Was it part of the settlement in the Dimon 10 versus Jenny C case? 11 A That's correct. 12 Q Mr. Mensie, when you received the claim file, 13 was it copies of documents, or was it the original 14 documents themselves? 15 A The claim file contains both originals and 16 copies to my recollection. 17 Q Okay. Specifically K-0107, do you know if that 18 was an original or a copy? 19 A Appears – it appeared to be a copy of the 20 original application that Mr. Noe signed and submitted 21 along with the premium, the \$175,000. 22 MR. LeBLANC: Can we mark K-0107 as Exhibit 2, 23 please. 24 (Exhibit No. 2 was marked for PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 79</p> <p>1 Q When it says applicant if other than annuitant, 2 what does that mean to you? 3 A That's – in there lies the name American 4 Motorists Insurance Company, and he was signing it on 5 behalf of American Motorists Insurance Company who were 6 the – designated as the applicant who was requesting the 7 annuity. 8 Q Do you know who prepared this document? 9 A I do not have any firsthand knowledge of that, 10 no. It appears to be prepared by Charter Life Insurance 11 Company is typically how it's done. 12 Q But that's just a guess on your part? 13 A Probably. I'm not going to say a guess. It's 14 Charter Security Life Insurance Company's application, so 15 leads me to believe they may have prepared it. 16 Q But you don't know for certain? 17 A No. 18 Q Okay. And under the section owner, do you see 19 where it says American Motorists Insurance Company? 20 A Yes. 21 Q What's it mean to be an owner of an annuity? 22 A That the – with respect to the annuity, that 23 they were the purchaser. They purchased the annuity. 24 Q Did they directly receive any benefit from PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 81</p> <p>1 identification.) 2 THE REPORTER: Okay. It's marked. 3 MR. LeBLANC: Thank you. 4 BY MR. LeBLANC: 5 Q To your knowledge did Mr. Noe ever sign any 6 other application other than this in the Dimon versus 7 Jenny C case? 8 A I saw no evidence of that. 9 Q Mr. Mensie, are you looking at documents again? 10 A I have before me your exhibit marked No. 2. 11 Q And that's it? 12 A Well, the other stacks are here as well, but 13 I'm looking at Exhibit No. 2. 14 Q Okay. To your knowledge did Mr. Noe sign any 15 other application other than Exhibit 2? 16 A To my knowledge I don't recall having seen any 17 evidence of Mr. Noe's signature appearing on any other 18 application relative to this annuity other than the one 19 that I'm looking at before me. 20 Q And do you know what the process was after Mr. 21 Noe signed this application, what happened to it? 22 A The process should have been that it was 23 submitted along with the premium and the annuity was then 24 issued, the contracts were issued; and I believe that's PRECISE REPORTING SERVICE, P.C.</p>

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<p>1 what took place here.</p> <p>2 Q Okay. Do you know if this application was</p> <p>3 issued in multiple parts?</p> <p>4 MR. O'DRISCOLL: I'm sorry. Application was</p> <p>5 issued in multiple parts? I don't understand that.</p> <p>6 BY MR. LeBLANC:</p> <p>7 Q The application was in multiple parts, or was</p> <p>8 there carbon copies to your knowledge?</p> <p>9 A From what I have before me I cannot tell</p> <p>10 whether or not there were multiple parts.</p> <p>11 Q Okay. Can you refer to the application that I</p> <p>12 sent you or I sent to your attorney on August 24th. Pull</p> <p>13 out that stack of documents. It's the sixth document in</p> <p>14 the stack, sixth page.</p> <p>15 A I believe I have it before me.</p> <p>16 MR. O'DRISCOLL: Yes, yes, the witness has the</p> <p>17 document before him.</p> <p>18 BY MR. LeBLANC:</p> <p>19 Q Okay. And for the record the document has the</p> <p>20 number 83A08153 written across the top in handwriting?</p> <p>21 A Yes.</p> <p>22 Q It says an annuity application with Charter</p> <p>23 Security Life Insurance Company, New York, 720 Fifth</p> <p>24 Avenue, New York, New York across the top?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p>1 Q If you refer back to Exhibit 2, Mr. Mensie, you</p> <p>2 see on the primary beneficiary -- or beneficiary</p> <p>3 relationship under primary, Mrs. Dimon's name is spelled</p> <p>4 D-i-a-m-o-n?</p> <p>5 A Yes.</p> <p>6 Q And in fact throughout Exhibit 2 the Dimon name</p> <p>7 is spelled D-I-a-m-o-n?</p> <p>8 A That's correct.</p> <p>9 Q Do you see how in Exhibit 3 the Dimon named is</p> <p>10 spelled D-i-m-o-n?</p> <p>11 A That's correct.</p> <p>12 Q Do you see on Exhibit 3 that the application is</p> <p>13 still American Motorists Insurance?</p> <p>14 A It's not really legible, but it appears to be</p> <p>15 so, yes.</p> <p>16 Q And that there appears to be the signature of</p> <p>17 John Noe on that applicant -- on that application?</p> <p>18 A That's correct.</p> <p>19 Q And you see in box 9, type of contract, single</p> <p>20 premium, on Exhibit 3 the "deferred" is crossed out and</p> <p>21 "immediate" is written in?</p> <p>22 A Yes, I do.</p> <p>23 Q And you see on Exhibit 2 that deferred is not</p> <p>24 crossed out?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
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<p>1 A Yes.</p> <p>2 Q Okay. Can you tell me on that application if</p> <p>3 you look in box 1 under name of annuitant.</p> <p>4 A Okay. Is there a question there?</p> <p>5 Q Yes, I'm asking if you see box 1.</p> <p>6 A Yes, I do.</p> <p>7 Q Okay. Can you tell me how on box 1 Mr. Dimon's</p> <p>8 name is spelled, his last name?</p> <p>9 A It is difficult to read, but it's Dennis J.,</p> <p>10 and then the last name is difficult to read.</p> <p>11 Q Okay. If you go back, go down to box 8, the</p> <p>12 beneficiary and relationship box.</p> <p>13 A Okay.</p> <p>14 Q Is it easier for you to read how Katherine or</p> <p>15 Katerine I. Dimon's name is spelled?</p> <p>16 A Yes.</p> <p>17 Q And how is that spelled?</p> <p>18 A It's spelled D-i-m-o-n.</p> <p>19 MR. LeBLANC: Okay. Can we mark this as</p> <p>20 Exhibit 3 I guess we're on now.</p> <p>21 (Exhibit No. 3 was marked for</p> <p>22 identification.)</p> <p>23 THE REPORTER: Okay. It's marked.</p> <p>24 BY MR. LeBLANC:</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p>1 A Correct.</p> <p>2 Q And you also see on Exhibit 3 that Mr. Dimon</p> <p>3 signed as the annuitant?</p> <p>4 A Yes.</p> <p>5 Q And that it appears on Exhibit 3 Syracuse, New</p> <p>6 York this 4th day of May, 1983?</p> <p>7 A That's correct.</p> <p>8 Q And then on Exhibit 2 Mr. Dimon's signature</p> <p>9 isn't present?</p> <p>10 A That's correct.</p> <p>11 Q And that there's no reference to Syracuse, New</p> <p>12 York on Exhibit 2?</p> <p>13 A That's correct.</p> <p>14 Q So would it be fair to say that Exhibit 3 is a</p> <p>15 more complete copy of the application than Exhibit 2 is?</p> <p>16 MR. O'DRISCOLL: Objection to the form of that</p> <p>17 question.</p> <p>18 BY MR. LeBLANC:</p> <p>19 Q Mr. Mensie?</p> <p>20 A I don't know about the fairness of it. It</p> <p>21 certainly appears that Exhibit 3 contains modifications</p> <p>22 that are not in Exhibit 2.</p> <p>23 Q Mr. Mensie, could you look at K-0021.</p> <p>24 A Okay.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 86</p> <p>1 MR. LeBLANC: Can we mark that as Exhibit 4, please. 2 (Exhibit No. 4 was marked for 3 identification.) 4 BY MR. LeBLANC: 5 Q Mr. Mensie, as between Exhibit 2 and 3, which 6 does Exhibit 4 more closely correspond with? 7 MR. O'DRISCOLL: I'll object to the form of 8 that question. I don't think it's fair that you would 9 ask the witness to compare a number of documents together 10 on the spot. 11 But, Mr. Mensie, you certainly may answer. 12 THE WITNESS: There are certainly similarities 13 in 2. Again now, Exhibit 4 is not legible as respects to 14 sections 6, 8, nor the underlying date area. Section 14 15 seems to have been modified from Exhibit 2. It is not 16 legible in Exhibit 14 after it says immediate annuity the 17 remaining handwritten notes are not legible in 4; whereas 18 in 3 it is. And in section 15 on Exhibit 4 the 19 handwritten note or indicator on 15 that you can see on 20 Exhibit 3 you cannot see on Exhibit 4. 21 BY MR. LeBLANC: 22 Q After that analysis, Mr. Mensie, which of the 23 two exhibits, 2 or 3, does Exhibit 4 most look like, most 24 correspond with? PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 88</p> <p>1 Q Do you recall seeing Exhibit 4 in your review 2 of the claim file? 3 A I recall -- yes, I recall seeing the Exhibit 2 4 specifically; and as respects to 4, I do recall having 5 seen it. I'm not sure where it originated from. 6 Q What do you mean by that, where it originated 7 from? 8 A I don't recall specifically where I saw it. 9 Q Okay. In the claim file, do you recall how 10 many copies of an annuity application were in the claim 11 file? 12 A My recollection is that there was just this 13 one, which you referred to as Exhibit No. 2. 14 Q Would you be surprised if you didn't recall 15 every document in the seven inch stack of documents you 16 received as the claim file? 17 A Would I be surprised by that? 18 Q Yeah. 19 A No, I wouldn't. 20 Q Is what we've marked as Exhibit 2, is that a 21 complete application in your opinion? 22 MR. O'DRISCOLL: Complete with respect to who? 23 MR. LeBLANC: Complete with respect to the 24 application process. PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 87</p> <p>1 MR. O'DRISCOLL: Again, object to the form of 2 the question, but Mr. Mensie, you can answer to the 3 extent -- 4 THE WITNESS: The documents all look the same; 5 they've just been changed. They're modified in different 6 forms and different fashions and certainly in their 7 degree of legibility. 8 BY MR. LeBLANC: 9 Q Okay and Exhibit 4 is a document that Kemper 10 produced; is that correct? 11 A Exhibit 4 was produced by Kemper. I don't know 12 if that is in fact correct. 13 Q It has a Kemper Bates stamp on the bottom 14 K-0021. Do you understand that to be meaning this is a 15 Kemper document produced in this litigation numbered 16 0012? 17 MR. O'DRISCOLL: Mr. LeBlanc, obviously it is. 18 I produced it two days ago. 19 THE WITNESS: I'll defer to counsel on that; 20 and if that being so, then it's correct. 21 BY MR. LeBLANC: 22 Q Okay. Do you know if there exists a more clear 23 or legible copy of Exhibit 4? 24 A Not to my knowledge. PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 89</p> <p>1 THE WITNESS: It appeared to be pretty 2 consistent with the process of attaining an annuity. 3 Again looking back to this matter back to 1983, I simply 4 saw the documents that were there and made them available 5 to counsel to review. 6 BY MR. LeBLANC: 7 Q If you saw an application like this one we've 8 marked as Exhibit 2, only a signature of the applicant on 9 it and no other signatures, would you consider that to be 10 a complete application? 11 MR. O'DRISCOLL: Object to form. With respect 12 to -- from whose perspective? 13 MR. LeBLANC: Kemper's. 14 THE WITNESS: When I saw that -- again looking 15 at this document that I saw in the file suggests to me 16 that this would not have been unusual to have seen the 17 application with only Mr. Noe's signature on it because 18 it's a process. This application was submitted; and 19 again we were trying to, at least I was at that point, 20 you know, searching for documents that before having 21 located these documents, I did not know they even 22 existed. So while that voluminous file was of great 23 volume, it was also more important to me to get that 24 material to counsel. PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 90</p> <p>1 BY MR. LeBLANC:</p> <p>2 Q Okay. I'm not asking you why you disclosed it.</p> <p>3 I'm asking you is this a complete document? And to use</p> <p>4 your words why don't I ask: At what point in the</p> <p>5 application process -- what point in the application</p> <p>6 process is represented by this application?</p> <p>7 A That the annuity has been applied for and</p> <p>8 signed off by the person who was paying the premium.</p> <p>9 Q Okay. Is that the beginning or the end?</p> <p>10 MR. O'DRISCOLL: Object to the form, but you</p> <p>11 may answer.</p> <p>12 THE WITNESS: It's probably --</p> <p>13 BY MR. LeBLANC:</p> <p>14 Q Is that the beginning or the end, Mr. Mensie?</p> <p>15 A It's not the beginning and it's not the end.</p> <p>16 It's somewhere in the middle because there has to be a</p> <p>17 process that goes on before that.</p> <p>18 Q Okay. Can you describe to me what the process</p> <p>19 is?</p> <p>20 A The process would have been that Charter</p> <p>21 Security would have relayed a quote for which the premium</p> <p>22 would have been based upon, then the premium would</p> <p>23 have -- and then the application would have so reflected</p> <p>24 that the premium cost for the annuity was in this</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 92</p> <p>1 indicate to you that Mr. Noe didn't sign a second</p> <p>2 application as reflected in Exhibit 3 and 4?</p> <p>3 MR. O'DRISCOLL: Objection, asked and answered.</p> <p>4 BY MR. LeBLANC:</p> <p>5 Q Mr. Mensie, could you answer the question,</p> <p>6 please.</p> <p>7 A I don't recall having seen anything of that so</p> <p>8 reflected.</p> <p>9 Q Thank you.</p> <p>10 MR. O'DRISCOLL: I'm sorry. Could you read</p> <p>11 back that question.</p> <p>12 (Record read as follows: Was there</p> <p>13 anything in the file that would</p> <p>14 indicate to you that Mr. Noe didn't</p> <p>15 sign a second application as</p> <p>16 reflected in Exhibit 3 and 4?)</p> <p>17 MR. O'DRISCOLL: Did not sign an application.</p> <p>18 THE WITNESS: Did not sign an application.</p> <p>19 BY MR. LeBLANC:</p> <p>20 Q Does that change your answer, Mr. Mensie?</p> <p>21 A The question is whether or not I saw evidence</p> <p>22 that Mr. Noe did not sign a second application. The</p> <p>23 evidence that I saw reflected that he in fact said he was</p> <p>24 not going to sign a second application because the</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 91</p> <p>1 instance \$175,000. They would have submitted that to Mr.</p> <p>2 Noe who would have signed off on it and sent it either</p> <p>3 back to Charter or to a broker who would have attained</p> <p>4 the remaining signatures and submitted it to the company,</p> <p>5 who would have then issued a policy.</p> <p>6 Q And if there was a mistake on the application</p> <p>7 at the point where it was prepared and submitted to the</p> <p>8 owner, the owner signed it, sent it to the agent, if</p> <p>9 there was a mistake discovered at that point, would it be</p> <p>10 unusual for the owner to have to sign a second</p> <p>11 application with correct information on it?</p> <p>12 A If there was a material mistake, would the</p> <p>13 owner have signed -- if there was agreement that there</p> <p>14 was a mistake, then I suspect the process would have gone</p> <p>15 smoothly, that the owner would have signed a second</p> <p>16 application.</p> <p>17 Q Do you know if there was any disagreement as to</p> <p>18 whether or not Mr. Dimon's name was spelled incorrectly</p> <p>19 or whether or not it was a deferred or immediate annuity?</p> <p>20 A I saw no -- you asked a twofold question there,</p> <p>21 but I saw no indicator that I can recall seeing relative</p> <p>22 to this that the mistake for which was at issue pertained</p> <p>23 to his name.</p> <p>24 Q Was there anything in the file that would</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 93</p> <p>1 dispute was one over the substance of the agreement not</p> <p>2 over the name.</p> <p>3 Q Mr. Mensie, is it Kemper's position that Mr.</p> <p>4 Noe only signed one application?</p> <p>5 MR. O'DRISCOLL: Objection, asked and answered.</p> <p>6 MR. LeBLANC: Not to my knowledge, no, it</p> <p>7 wasn't answered.</p> <p>8 MR. O'DRISCOLL: Mr. Mensie has testified as to</p> <p>9 his review of the documents and what they appear to him.</p> <p>10 MR. LeBLANC: Him as a representative of</p> <p>11 Kemper.</p> <p>12 MR. O'DRISCOLL: Yes.</p> <p>13 BY MR. LeBLANC:</p> <p>14 Q Mr. Mensie, if you refer to Exhibit 2,</p> <p>15 (inaudible) sign that document?</p> <p>16 A I didn't hear your question.</p> <p>17 Q Referring to Exhibit 2, do you see where Mr.</p> <p>18 Noe signed that document?</p> <p>19 A Yes, I do.</p> <p>20 Q Do you see that Mr. Dimon's name is misspelled</p> <p>21 in box 1?</p> <p>22 A I see the spelling of Mr. Dimon's name there,</p> <p>23 correct.</p> <p>24 Q Do you understand that that's a misspelling?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p>1 A It seems inconsistent with how it's spelled in 2 other places, that is correct. 3 Q And do you see where it's -- that inconsistency 4 is repeated in box 8? 5 A I do. 6 Q And where in box 9 the word "immediate" doesn't 7 appear and "deferred" does? 8 A I see where box 9 is typed single premium 9 deferred annuity. 10 Q Okay. And then if you look at Exhibit 3, 11 application with different information on it, do you 12 agree that the information on application or Exhibit 3 is 13 different from the information on Exhibit 2? 14 A I do. 15 Q Do you see where Mr. Noe signed Exhibit 3? 16 A I see where it purports to be -- it's really 17 not legible, but it purports to be the signature line; 18 and it looks similar to the signature as it appears on 19 Exhibit No. 2, which is really unusual but... 20 Q Why is that unusual? 21 A Because as best I can make out, they're in the 22 exact same places. I'm no handwriting expert, but that 23 looks rather unusual to me. 24 Q So is it Kemper's position that Mr. Noe didn't PRECISE REPORTING SERVICE, P.C.</p>	<p>1 things for the witness, I think it needs to be on the 2 record. 3 MR. LeBLANC: I'm going to clarify something 4 with Mr. O'Driscoll. If you object, then we'll just stay 5 on record. 6 MS. McQUAY: I think we should stay on record 7 on this. 8 MR. LeBLANC: Mr. O'Driscoll, my understanding 9 is the witness may be referring to letters that were 10 produced regarding the dispute as to the terms of the 11 annuity and not any letter requesting Mr. Noe signed a 12 different application. 13 MR. O'DRISCOLL: Well, you can certainly ask 14 the witness about that, Peter. That was kind of the 15 basis for my objection as to form. 16 MR. LeBLANC: Okay. 17 BY MR. LeBLANC: 18 Q Mr. Mensie, can you point me to a document that 19 requested that Mr. Noe sign a different or changed 20 application? 21 MR. O'DRISCOLL: Well, again, Peter, I would 22 just say I don't think it's fair to ask Mr. Mensie to go 23 through all of these documents and point out something. 24 You might want to be more pointed in your question. PRECISE REPORTING SERVICE, P.C.</p>
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<p>1 sign Exhibit 3 as it appears today? 2 A I don't know. I didn't see any evidence. I 3 saw evidence that said he was not going to sign another 4 application. I didn't see any evidence that had 5 reflected that he had signed one, as your questions would 6 suggest, relative to a misspelling of the name. 7 Q Mr. Mensie, I would suggest that you might be a 8 little confused about what Mr. Noe was asked to do. Do 9 you mean to say that Mr. Noe was asked to accept an 10 amended or changed annuity contract? 11 MR. O'DRISCOLL: Objection to the form of the 12 question. I don't think we have established the 13 foundation of the time period you're talking about 14 anything or anything else. 15 MR. LeBLANC: Can we go off record for a second 16 here? 17 MR. O'DRISCOLL: Okay. 18 MR. LeBLANC: Anyone else object? 19 MR. DeWICK: No. 20 MS. McQUAY: What are we going off record for? 21 MR. LeBLANC: Because I think I need to clarify 22 this issue, and we can do it much more quickly off 23 record. 24 MS. McQUAY: If you're going to be clarifying PRECISE REPORTING SERVICE, P.C.</p>	<p>1 MR. LeBLANC: Frankly I'm not sure it's fair to 2 disclose 120 documents the day before the deposition 3 either, but that's a different point. The issue is 4 Mr. Mensie testified that Mr. Noe was asked to sign a 5 different application. I would like to know the basis of 6 his knowledge for that. 7 THE WITNESS: Bear with me. I'll find the 8 letter. 9 MR. O'DRISCOLL: Peter, you had made reference 10 to correspondence from MetLife in the exhibits that you 11 had sent. Perhaps, if I could, I might direct the 12 witness' attention toward that. 13 MR. LeBLANC: I made reference to 14 correspondence from Charter Security and to Charter 15 Security; but to speed this process up, that would be 16 great. 17 MR. O'DRISCOLL: I'm sorry. What? 18 MR. LeBLANC: If we could speed the process up, 19 that would be great. I would have no objection to you 20 pointing to particular documents. 21 MR. O'DRISCOLL: Mr. LeBlanc refers to the -- 22 made reference to the correspondence in there in 23 connection with what Mr. Noe was asked to do. 24 THE WITNESS: It's back to Exhibit 1. Okay. PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 98</p> <p>1 Yeah, I've located it. It's back to Exhibit No. 1 that</p> <p>2 is a letter dated October 10th, 1983, where Mr. Noe</p> <p>3 writes to Charter Security Life and advises them that the</p> <p>4 original policy received was for the term of 240 months</p> <p>5 certain and life thereafter and an order agreed upon</p> <p>6 between Mr. Hughes and Mr. Foley. He cites that --</p> <p>7 Q What document does it say that Mr. Noe was</p> <p>8 asked to sign a different application?</p> <p>9 A I read that to understand that is exactly what</p> <p>10 he was being asked to do. And he says there: I intend</p> <p>11 to retain the original policy in our files and consider</p> <p>12 this to be a valid and enforceable agreement.</p> <p>13 Q But that doesn't say he was asked to sign a</p> <p>14 different application; is that correct?</p> <p>15 A I don't see the communication from Charter</p> <p>16 Security here. I suspect that would shed light on what</p> <p>17 he was actually being asked to do.</p> <p>18 Q I'm asking you on Exhibit 1, there's nothing in</p> <p>19 there that says, Mr. Noe, please sign an amended</p> <p>20 application or a different application?</p> <p>21 A It does not read Mr. Noe, please sign a</p> <p>22 different application.</p> <p>23 Q Okay. Thank you.</p> <p>24 Do you know when the application was</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 100</p> <p>1 MR. O'DRISCOLL: If you know.</p> <p>2 THE WITNESS: I don't recall.</p> <p>3 BY MR. LeBLANC:</p> <p>4 Q Are there any documents in your possession or</p> <p>5 in Kemper's possession that would --</p> <p>6 A Yeah, they were part of the claim file.</p> <p>7 Q Okay. We're going to suspend on that issue</p> <p>8 then.</p> <p>9 MR. O'DRISCOLL: Well, I've made my position</p> <p>10 clear on that today.</p> <p>11 MR. DeWICK: If I may, are we going to break</p> <p>12 for lunch or are we going to try to go straight through?</p> <p>13 MR. LeBLANC: I would be more than happy to</p> <p>14 break for lunch if everyone else wants to do that, and if</p> <p>15 the court reporter can find a lunch in Long Grove.</p> <p>16 MR. DeWICK: I guess my question was: Can we</p> <p>17 push on through, or is it necessary to break for lunch?</p> <p>18 Are we going long into the afternoon?</p> <p>19 MR. LeBLANC: We'll probably go long into the</p> <p>20 afternoon so why don't we do that. Why don't we take a</p> <p>21 break for lunch.</p> <p>22 MR. O'DRISCOLL: Okay. What's say we -- it's</p> <p>23 12:45. Do you guys want to go another half hour and then</p> <p>24 take a short break? Is that acceptable?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 99</p> <p>1 signed by Mr. Noe, the date when it was signed by Mr.</p> <p>2 Noe?</p> <p>3 MR. O'DRISCOLL: If you know Mr. Mensie.</p> <p>4 THE WITNESS: No, no.</p> <p>5 MR. O'DRISCOLL: There's been no request for</p> <p>6 you to go through any documents. We'll just put these</p> <p>7 aside.</p> <p>8 BY MR. LeBLANC:</p> <p>9 Q Okay. If you look at Exhibit 2, is that</p> <p>10 application dated as to Mr. Noe's signature?</p> <p>11 A Exhibit 2, unfortunately we don't have them</p> <p>12 out. There is no date.</p> <p>13 Q Look at Exhibit 3. Do you see a date on</p> <p>14 Exhibit 3 as to Mr. Noe's signature?</p> <p>15 A I cannot see a date.</p> <p>16 Q Mr. Mensie, with reference to the bad faith</p> <p>17 litigation.</p> <p>18 MR. O'DRISCOLL: Is there a question pending,</p> <p>19 Peter?</p> <p>20 BY MR. LeBLANC:</p> <p>21 Q The reason I asked, in reference to the bad</p> <p>22 faith litigation, did Kemper prevail?</p> <p>23 A There was a resolution of it.</p> <p>24 Q And what was that resolution?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 101</p> <p>1 MS. McQUAY: Okay with me.</p> <p>2 MR. DeWICK: I'm actually late for a call I</p> <p>3 have to make. I'd actually prefer to take it now if</p> <p>4 everyone is willing to accommodate me.</p> <p>5 MR. O'DRISCOLL: Okay. And we'll reconvene</p> <p>6 1:15 East Coast time.</p> <p>7 (Whereupon the preceding</p> <p>8 deposition was recessed for</p> <p>9 lunch and scheduled to</p> <p>10 continue on September 7, 2006, at</p> <p>11 1:15 o'clock p.m.)</p> <p>12 MR. LeBLANC: Let's go back on record. I'd ask</p> <p>13 the court reporter to read the last question back,</p> <p>14 please.</p> <p>15 (Record read.)</p> <p>16 BY MR. LeBLANC:</p> <p>17 Q Mr. Mensie, have you ever spoken with John Noe</p> <p>18 or Noe?</p> <p>19 A No.</p> <p>20 Q Mr. Mensie?</p> <p>21 A The answer was no.</p> <p>22 Q Oh, I didn't hear you. Sorry. Do you know if</p> <p>23 anyone at Kemper has spoken with Mr. Noe regarding this</p> <p>24 case.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p>1 A I would think not.</p> <p>2 Q As the litigation claims consultant assigned to</p> <p>3 this case, would it be your responsibility to contact</p> <p>4 potential witnesses?</p> <p>5 A No.</p> <p>6 Q Whose responsibility would it be?</p> <p>7 A Defense counsel's.</p> <p>8 Q Okay. And would it be your responsibility to</p> <p>9 find out where these witnesses may be?</p> <p>10 MR. O'DRISCOLL: Object to form in terms of</p> <p>11 responsibility, the use of that word; but to the extent</p> <p>12 that you understand the question, Mr. Mensie, you may of</p> <p>13 course answer.</p> <p>14 THE WITNESS: To the extent that I could assist</p> <p>15 counsel in whatever task he might deem appropriate</p> <p>16 relative to this litigation, I would be responsible.</p> <p>17 BY MR. LeBLANC:</p> <p>18 Q Okay. But based on your prior testimony you</p> <p>19 don't have a recollection whether or not you tried to</p> <p>20 ascertain Mr. Noe's last known address; is that correct?</p> <p>21 A That is not correct. I hope that that's not</p> <p>22 what my testimony suggested.</p> <p>23 Q Okay. Did you attempt to ascertain Mr. Noe's</p> <p>24 last known address?</p> <p>PRECISE REPORTING SERVICE, P.C.</p>	<p>1 MR. LeBLANC: I just want to know if he has a</p> <p>2 different recollection now. Now he remembered Mr. --</p> <p>3 trying to find out Mr. Noe's last known address.</p> <p>4 MR. O'DRISCOLL: Yes, he testified he</p> <p>5 remembered Mr. Noe. He doesn't remember anybody else.</p> <p>6 Asked and answered.</p> <p>7 BY MR. LeBLANC:</p> <p>8 Q Mr. Mensie, do you recall asking about anyone</p> <p>9 else's address other than Mr. Noe's?</p> <p>10 A I recall asking about each of the individuals</p> <p>11 who counsel made a request of. Do I recall them</p> <p>12 specifically by name at this time? No. If you would</p> <p>13 care to give me a name I will answer specifically</p> <p>14 regarding that person if I have an independent</p> <p>15 recollection of that person.</p> <p>16 Q How about Mr. LaTorre?</p> <p>17 A I do not recall Mr. LaTorre specifically, no.</p> <p>18 Q How about Mary Graci?</p> <p>19 MR. O'DRISCOLL: Okay, listen. I'm going to</p> <p>20 object to this again on the grounds of privilege. I</p> <p>21 think what you're asking now -- you're asking Mr. Mensie</p> <p>22 what I said to him and what individuals I asked him to</p> <p>23 contact?</p> <p>24 MR. LeBLANC: I'm asking Mr. Mensie what</p> <p>PRECISE REPORTING SERVICE, P.C.</p>
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<p>1 A At the request of counsel, yes.</p> <p>2 Q Okay. Your testimony earlier was that you</p> <p>3 didn't recollect which individuals you tried to ascertain</p> <p>4 last known addresses. Do you have a recollection now?</p> <p>5 A I don't have a complete recollection, but those</p> <p>6 to which counsel asked that I attain last known addresses</p> <p>7 for I did attempt to do so.</p> <p>8 Q Okay. And who were those individuals?</p> <p>9 A I suspect they are -- I don't have a</p> <p>10 recollection of who those individuals are in the</p> <p>11 entirety, so I don't want to suggest to you otherwise.</p> <p>12 Counsel made a request. They were people amongst those</p> <p>13 who were noted through some discovery to have been</p> <p>14 involved in the case, and they were former employees; and</p> <p>15 I attempted to attain their last known addresses.</p> <p>16 Q You specifically just said that you attempted</p> <p>17 to attain Mr. Noe's last known address. You have a</p> <p>18 recollection you tried to do that?</p> <p>19 A That is correct.</p> <p>20 Q Is there anyone else you can recall trying to</p> <p>21 ascertain their last known address?</p> <p>22 MR. O'DRISCOLL: Peter, this has been asked and</p> <p>23 answered, and we're also getting into privileged areas</p> <p>24 too. It's been asked and answered.</p> <p>PRECISE REPORTING SERVICE, P.C.</p>	<p>1 individuals he tried to ascertain their last known</p> <p>2 address. He just told me if I mentioned specific names,</p> <p>3 he might recollect it.</p> <p>4 MR. O'DRISCOLL: Well, as his counsel, I'm</p> <p>5 going to instruct him not to answer that.</p> <p>6 MR. LeBLANC: You're going to instruct him not</p> <p>7 to answer a factual question about whether or not he</p> <p>8 tried to locate witnesses?</p> <p>9 MR. O'DRISCOLL: Well, yes, because Mr. Mensie</p> <p>10 just testified that I asked him to find the addresses of</p> <p>11 some people, and now you're asking him to identify those</p> <p>12 people.</p> <p>13 MR. LeBLANC: I'm asking him to identify the</p> <p>14 individuals that he tried to locate, that he asked</p> <p>15 someone at Kemper to try to locate.</p> <p>16 MR. O'DRISCOLL: Yes, and he just told you</p> <p>17 those individuals are the ones that I asked him about.</p> <p>18 MR. LeBLANC: I've asked several questions on</p> <p>19 this, and I think you may have objected to the questions</p> <p>20 being asked and answered; and now you're raising an</p> <p>21 objection as to privilege.</p> <p>22 MR. O'DRISCOLL: I've had a continuing</p> <p>23 objection as to privilege. You've been swimming around</p> <p>24 it, and now you've clearly zeroed in. I've tried to give</p> <p>PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 106</p> <p>1 you some leeway, but it's over now.</p> <p>2 BY MR. LeBLANC:</p> <p>3 Q Okay. How about Mr. Lemhoefer; does that name</p> <p>4 ring a bell to you, Mr. Mensie?</p> <p>5 MR. O'DRISCOLL: Objection. I'll instruct the</p> <p>6 witness not to answer.</p> <p>7 MR. LeBLANC: He can't even answer whether he</p> <p>8 recalls the name?</p> <p>9 MR. O'DRISCOLL: I'm sorry. I misunderstood</p> <p>10 the question. You're asking him if he recalls the</p> <p>11 name from his review of the file?</p> <p>12 MR. LeBLANC: Does he as a representative of</p> <p>13 Kemper know who Mr. Lemhoefer is.</p> <p>14 MR. O'DRISCOLL: Okay. You may answer that.</p> <p>15 THE WITNESS: No, I do not know who he is</p> <p>16 specifically.</p> <p>17 BY MR. LeBLANC:</p> <p>18 Q Do you know if he was a former or present</p> <p>19 employee of Kemper?</p> <p>20 A I believe that he was a former employee.</p> <p>21 Q How about Mr. Noe, was he a former or current</p> <p>22 employee of Kemper?</p> <p>23 A Former.</p> <p>24 Q Do you know of anyone who worked on this case,</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 108</p> <p>1 time.</p> <p>2 MR. LeBLANC: That sounds like your opinion,</p> <p>3 Mr. O'Driscoll, and I will suspend on the issue of who</p> <p>4 Mr. Mensie tried to locate on behalf of Kemper at this</p> <p>5 time.</p> <p>6 MS. McQUAY: Just so the record is clear, I'd</p> <p>7 like it stated on the record that am I correct,</p> <p>8 Mr. O'Driscoll, in that you instruct the witness not to</p> <p>9 answer any question that inquired which former witness --</p> <p>10 employees of Kemper he sought to locate?</p> <p>11 MR. O'DRISCOLL: I do think, yes, that is</p> <p>12 privileged information based upon the witness' testimony</p> <p>13 today that any witnesses that he attempted to locate was</p> <p>14 done on the advice of counsel. My objection in this</p> <p>15 regard, as I said, is separate from what I am willing to</p> <p>16 do, which is to discuss with you afterwards if you think</p> <p>17 there is some sort of a need for Kemper to supplement its</p> <p>18 initial disclosures on the grounds of this, then I of</p> <p>19 course am willing to discuss that.</p> <p>20 MS. McQUAY: Well, I understand that, but my</p> <p>21 immediate concern and the reason I was -- and I'm sure</p> <p>22 that other people wanted the record to be very clear is</p> <p>23 that I believe your instruction to the witness not to</p> <p>24 answer is erroneous. So I want a clear record so we can</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 107</p> <p>1 being the Dimon versus Jenny C case, whether any of those</p> <p>2 individuals are current employees of Kemper?</p> <p>3 A No.</p> <p>4 Q No, you don't know or, no, they're not current</p> <p>5 employees?</p> <p>6 A No, they're not current employees to my</p> <p>7 knowledge.</p> <p>8 Q Did you attempt to try to locate</p> <p>9 Mr. Lemhoefer's last known address?</p> <p>10 MR. O'DRISCOLL: Objection, privilege and also</p> <p>11 asked and answered.</p> <p>12 BY MR. LeBLANC:</p> <p>13 Q Mr. Mensie.</p> <p>14 A If he was one of the people that counsel</p> <p>15 requested, then I attempted to try to locate him.</p> <p>16 Q Okay. Did you have any success with that?</p> <p>17 MR. O'DRISCOLL: Objection. I'll instruct the</p> <p>18 witness not to answer. Peter, we've been over all this</p> <p>19 already. I've told you my position. If you want to talk</p> <p>20 about this afterwards whether you think that this is --</p> <p>21 there's any obligation for me to supplement disclosures</p> <p>22 about this sort of information, we can talk about that</p> <p>23 later; but we've been over this now in this deposition I</p> <p>24 don't know how long, clearly a disproportionate amount of</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 109</p> <p>1 go to the court on the point.</p> <p>2 MR. O'DRISCOLL: Yes, my instruction to the</p> <p>3 witness is not to answer on those grounds. He's</p> <p>4 testified clearly that anything he did was at my request,</p> <p>5 and I think that's privileged as both attorney work</p> <p>6 product and on the grounds of attorney-client privilege.</p> <p>7 MS. McQUAY: Fine. Mr. LeBlanc, I'm sorry for</p> <p>8 interrupting.</p> <p>9 MR. LeBLANC: No problem, Ms. McQuay. Thank</p> <p>10 you.</p> <p>11 BY MR. LeBLANC:</p> <p>12 Q Mr. Mensie, can you refer to what was marked as</p> <p>13 K-0005.</p> <p>14 A Yes.</p> <p>15 Q It's entitled Structured Settlement Check-Off</p> <p>16 Sheet. Do you see that?</p> <p>17 A Yes.</p> <p>18 Q Do you know if this is a complete copy of that</p> <p>19 document?</p> <p>20 A I don't know if it is or not. This dates back</p> <p>21 to '83. In terms of its form and substance it -- in</p> <p>22 answer to your question, I don't know.</p> <p>23 Q Okay. Have you ever seen a document that</p> <p>24 looked like this?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 110</p> <p>1 A Not that I recall specifically in this format</p> <p>2 other than this document I guess.</p> <p>3 Q Is this document a document that was produced</p> <p>4 by Kemper?</p> <p>5 A Yes.</p> <p>6 Q And do you know if -- strike that.</p> <p>7 Do you know who Mary Graci is?</p> <p>8 A She was an employee. From the claim file it</p> <p>9 appears that she was an employee of Kemper working out of</p> <p>10 the New York City office in '83.</p> <p>11 Q Okay. And what was the involvement in 1983 of</p> <p>12 the New York City office in this case, in Dimon versus</p> <p>13 Jenny C? I'm sorry.</p> <p>14 A In the underlying case they were the office</p> <p>15 that -- where the claim file was being actually handled.</p> <p>16 Q So did Mr. LaTorre work out of the New York</p> <p>17 office?</p> <p>18 A All the indications are that he did.</p> <p>19 Q Okay. And at some point was the claim file or</p> <p>20 the case transferred out of the New York City office to</p> <p>21 another office?</p> <p>22 A It was transferred to Mr. Noe.</p> <p>23 Q And which office did Mr. Noe work out of?</p> <p>24 A Mr. Noe was assigned, the home office.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 112</p> <p>1 Grove so the record is incorrect. It was being sent to</p> <p>2 him in Long Grove.</p> <p>3 Q Okay. When you say "it was," what are you</p> <p>4 referring to?</p> <p>5 A Well, there were communications in the file</p> <p>6 that were sent to John Noe at the home office here in</p> <p>7 Long Grove.</p> <p>8 Q Okay. Were you looking at those documents when</p> <p>9 you gave me that answer?</p> <p>10 A Yes.</p> <p>11 Q Okay. One more time, Mr. Mensie, unless I ask</p> <p>12 you to look at a document, please don't look at them</p> <p>13 until I request that, okay?</p> <p>14 MR. O'DRISCOLL: For the record -- okay.</p> <p>15 That's fine. For the record Mr. Mensie was actually</p> <p>16 looking at the exhibits that you had sent over</p> <p>17 previously.</p> <p>18 MR. LeBLANC: I understand that, but I'd ask</p> <p>19 that the witness not refer to any documents unless I ask</p> <p>20 him to refer to those documents.</p> <p>21 MR. O'DRISCOLL: Very well.</p> <p>22 BY MR. LeBLANC:</p> <p>23 Q Would it be unusual for an individual assigned</p> <p>24 to a claim to have documents sent to their home address?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 111</p> <p>1 Q And where is that located?</p> <p>2 A The physical location of the home office is in</p> <p>3 Round Lake, Illinois -- Long Grove, Illinois. Strike</p> <p>4 that.</p> <p>5 Q Just so I have it straight, Mr. Noe may have</p> <p>6 not worked out of the home office, when you say the home</p> <p>7 office was physically located there?</p> <p>8 A From what I can see he -- from the claim file</p> <p>9 itself it appears that he -- he was assigned to the home</p> <p>10 office staff. I guess it just depends on the function</p> <p>11 that he was involved in, whether or not he was actually</p> <p>12 physically located in the home office. It looks like he</p> <p>13 worked as a regional resident of some sort assigned to</p> <p>14 the home office.</p> <p>15 Q And what does it mean to be a regional</p> <p>16 resident?</p> <p>17 A I don't know. I probably should strike that</p> <p>18 and say regional because I can't make an independent</p> <p>19 judgment from this file what his specific territory was.</p> <p>20 The address on the correspondence suggests that his</p> <p>21 office was not here in Long Grove.</p> <p>22 Q And where was it located then?</p> <p>23 A Communications that I saw -- well, strike that.</p> <p>24 The communications are sent to him in Long</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 113</p> <p>1 A Not if they worked from their home address.</p> <p>2 Q So even if Mr. Noe had letters addressed to</p> <p>3 home office claim, American Motorists Insurance Company,</p> <p>4 Long Grove, that doesn't mean that was actually his</p> <p>5 office; is that true?</p> <p>6 A No, that's not true. If he was assigned to the</p> <p>7 home office staff, he would have worked out of Long</p> <p>8 Grove. However, if he was working as a resident, he may</p> <p>9 have worked from another physical location as well.</p> <p>10 Q Okay. If he worked as a resident, would he</p> <p>11 still receive mail in Long Grove?</p> <p>12 A Yes.</p> <p>13 Q Then that mail would be forwarded to him at</p> <p>14 some other location?</p> <p>15 A That's correct.</p> <p>16 Q So if you turn to what's been marked as K-0007?</p> <p>17 MR. O'DRISCOLL: Okay. I'm showing the witness</p> <p>18 that document now.</p> <p>19 THE WITNESS: Okay.</p> <p>20 BY MR. LeBLANC:</p> <p>21 Q Mr. Noe requests that Ms. Graci send him the</p> <p>22 settlement agreement to my home address?</p> <p>23 A Correct.</p> <p>24 Q Seeing that address, does that refresh your</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p>1 recollection about what Mr. Noe's last known address 2 might be?</p> <p>3 A Whether or not this is a correct address or 4 not, I do not know.</p> <p>5 MR. O'DRISCOLL: Peter, is there a question 6 pending?</p> <p>7 MR. LeBLANC: No, I'm just looking at some 8 documents right now.</p> <p>9 BY MR. LeBLANC:</p> <p>10 Q Mr. Mensie, I believe you testified that 11 postjudgment in this case was assigned to Mr. Noe; is 12 that correct?</p> <p>13 A Yes.</p> <p>14 Q Okay. If a dispute arose as to the terms of 15 the annuity postjudgment, would it be Mr. Noe's 16 responsibility to address that dispute?</p> <p>17 MR. O'DRISCOLL: Object to the form of the 18 question. You may answer to the extent that you 19 understand it.</p> <p>20 THE WITNESS: I understand it to the extent of 21 this, the material that I've read relative to this case, 22 that that dispute that arose was one that should have 23 been addressed by the plaintiff's attorney.</p> <p>24 BY MR. LeBLANC: PRECISE REPORTING SERVICE, P.C.</p>	<p>1 about over the last 20 years every employee at Kemper who 2 talked about or thought about the Dimon Jenny C case.</p> <p>3 BY MR. LeBLANC:</p> <p>4 Q Was it Mr. Noe's responsibility to address the 5 dispute? Was it his responsibility to assert Kemper's 6 position regarding the dispute?</p> <p>7 A Okay. That's a different question.</p> <p>8 MR. O'DRISCOLL: Object to the form because 9 that's two questions. It's compound.</p> <p>10 But to the extent you can answer the 11 question, you can answer.</p> <p>12 THE WITNESS: To the extent I can answer the 13 question relative to state Kemper's position regarding 14 the dispute, yes, that's Mr. Noe's responsibility.</p> <p>15 BY MR. LeBLANC:</p> <p>16 Q Do you know if Mr. Noe received information 17 from any other individual at Kemper to respond to the 18 dispute?</p> <p>19 A Not from the documents that I reviewed.</p> <p>20 Q Do you know or is it Kemper's position now that 21 Mr. Noe had full authority to respond to the dispute as 22 to the terms of the annuity back in 1983?</p> <p>23 MR. O'DRISCOLL: Object to the form.</p> <p>24 THE WITNESS: My testimony is that Mr. Noe had PRECISE REPORTING SERVICE, P.C.</p>
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<p>1 Q I'm asking you within Kemper would it be Mr. 2 Noe's responsibility to address that dispute?</p> <p>3 A As it relates specifically to this case, the 4 dispute that arose, again my testimony is that my reading 5 of the documents suggest that that dispute was one that 6 the plaintiff's attorney would have been obligated to 7 address.</p> <p>8 Q That's not really responsive to my question. 9 My question is: Within Kemper whose responsibility would 10 it be to address this dispute?</p> <p>11 A When you say "this dispute," I can only answer 12 that by again referring back to my prior answer.</p> <p>13 Q And that's nonresponsive. Who at Kemper would 14 work on this issue? After the dispute arose who would 15 work on it?</p> <p>16 MR. O'DRISCOLL: Well, when you say what issue, 17 object to the form, question of what issue are you 18 talking about?</p> <p>19 MR. LeBLANC: The issue I just asked four or 20 five questions about, the dispute as to the terms of the 21 annuity.</p> <p>22 MR. O'DRISCOLL: Well, I mean at what point? 23 We're addressing that issue now as we speak.</p> <p>24 MR. LeBLANC: We can do that. We can talk PRECISE REPORTING SERVICE, P.C.</p>	<p>1 the responsibility to state Kemper's position with 2 respect to the dispute.</p> <p>3 BY MR. LeBLANC:</p> <p>4 Q Did he have the authority to state Kemper's 5 position?</p> <p>6 A In the context of resolving the matter that was 7 before him, yes.</p> <p>8 Q What is the procedure for correcting errors in 9 annuities?</p> <p>10 A I don't know that there's a general procedure. 11 I guess it depends on the nature of the error.</p> <p>12 Q In this case what was the procedure that should 13 have been used?</p> <p>14 MR. O'DRISCOLL: Object to form, assumes that 15 there was an error to correct.</p> <p>16 But to the extent you can make sense of 17 the question, you can answer.</p> <p>18 THE WITNESS: I can't make sense of the 19 question because you talked earlier about a type -- an 20 error in the name. You know, to the extent that --</p> <p>21 BY MR. LeBLANC:</p> <p>22 Q The dispute. That's an error. I'm asking 23 about the dispute in this case. Did you understand that 24 there's a dispute as to what the terms of the annuity PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 118</p> <p>1 are?</p> <p>2 A I do, yes.</p> <p>3 Q Who gave Mr. Noe the authority to respond with</p> <p>4 Kemper's position as to the dispute regarding the terms</p> <p>5 of the annuity in this case?</p> <p>6 A I think the authority is inherent in the</p> <p>7 responsibility of assigning him the claim file to settle</p> <p>8 the underlying case.</p> <p>9 MR. O'DRISCOLL: Peter, was there a question</p> <p>10 pending? I'm sorry.</p> <p>11 MR. LeBLANC: No, I'm reviewing the documents.</p> <p>12 BY MR. LeBLANC:</p> <p>13 Q Mr. Mensie, to whom did Mr. Noe report</p> <p>14 regarding the Dimon versus Jenny C case at Kemper?</p> <p>15 A I have no independent recollection of that.</p> <p>16 Absent a review of the actual claim contents I can't</p> <p>17 answer that question.</p> <p>18 Q Would it surprise you that someone referred to</p> <p>19 as tech claim would report to someone at division claim?</p> <p>20 A I have no -- I mean surprise, I mean qualify</p> <p>21 that. That doesn't make any sense to me.</p> <p>22 Q Who is Mr. Noe's supervisor or manager?</p> <p>23 A Absent a review of the claim file documents, I</p> <p>24 cannot give you that information.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 120</p> <p>1 distinction may have been at that time.</p> <p>2 Q Okay. Look at the top line of K-0102, you see</p> <p>3 an arrow that says Mary Graci or an arrow next to Mary</p> <p>4 Graci?</p> <p>5 A Yes.</p> <p>6 Q Do you know what that arrow signifies?</p> <p>7 A I do not.</p> <p>8 Q Have you ever seen a mark like that on a Kemper</p> <p>9 document?</p> <p>10 A I don't recall any independent knowledge of</p> <p>11 seeing that. I mean it seems to be a directional error</p> <p>12 marked to the people who are going to be recipients of</p> <p>13 this memorandum.</p> <p>14 Q Okay. And where it says ocean marine claim,</p> <p>15 New York City, can you tell me what that means?</p> <p>16 A That was the office that Mary Graci worked out</p> <p>17 of I suspect.</p> <p>18 Q The term ocean marine claim, what does that</p> <p>19 mean?</p> <p>20 A That was the title of the division that she was</p> <p>21 assigned to or that she worked for.</p> <p>22 Q But Ms. Graci was an employee of Kemper; is</p> <p>23 that correct?</p> <p>24 A Yes, I believe so. Yes.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 119</p> <p>1 Q Can you refer to what's been marked as K-0102.</p> <p>2 MR. O'DRISCOLL: All right. I'm handing those</p> <p>3 two documents to the witness at this time, documents</p> <p>4 Kemper produced marked K-001 and K-0002, three zeros that</p> <p>5 is.</p> <p>6 MR. LeBLANC: No, it's just K-0102.</p> <p>7 MR. O'DRISCOLL: Oh, okay, 0102, got you.</p> <p>8 K-0102 is the first page of a document that's two pages</p> <p>9 long so I'm going to hand the witness K-0102 and K 0103.</p> <p>10 MR. LeBLANC: Thank you.</p> <p>11 BY MR. LeBLANC:</p> <p>12 Q Mr. Mensie, can you let me know when you're</p> <p>13 done reviewing those documents.</p> <p>14 A Okay. (Witness peruses documents.)</p> <p>15 Okay.</p> <p>16 Q Starting at the top in the black box, that says</p> <p>17 Kemper?</p> <p>18 A Yes.</p> <p>19 Q But there's no group. Why is the group</p> <p>20 missing?</p> <p>21 A I don't know.</p> <p>22 Q Is there a distinction between Kemper and</p> <p>23 Kemper Group?</p> <p>24 A If there was, I do not know what that</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 121</p> <p>1 Q Do you see that the document's dated 4-18-1983?</p> <p>2 A Yes.</p> <p>3 Q To Klaus Lemhoefer?</p> <p>4 A Yes.</p> <p>5 Q From J. L. Noe, tech. claim, Long Grove, B-8.</p> <p>6 A Okay. Yes.</p> <p>7 Q Why would a person in Mr. Noe's position write</p> <p>8 a memorandum to a person in Mr. Klaus Lemhoefer's</p> <p>9 position?</p> <p>10 MR. O'DRISCOLL: Object to form in that it</p> <p>11 assumes lack of foundation, specifically talking about</p> <p>12 the positions of these folks when I don't know that's</p> <p>13 been established on the record.</p> <p>14 But to the extent that you can answer the</p> <p>15 question, you may answer.</p> <p>16 THE WITNESS: For informational purposes.</p> <p>17 BY MR. LeBLANC:</p> <p>18 Q What was Mr. Noe's position at Kemper?</p> <p>19 A Based on how he signed his memoran -- letters</p> <p>20 and memorandum he was assigned to the home office claim</p> <p>21 technical staff.</p> <p>22 Q Okay. And Mr. Lemhoefer's position based on</p> <p>23 0102?</p> <p>24 A That he's assigned to the divisional claim</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p>1 staff.</p> <p>2 Q And what is the relationship between Mr. Noe's</p> <p>3 position and Mr. Lemhoefer's position?</p> <p>4 A Back in 1983 I can only speculate. I mean it</p> <p>5 would not be unusual that you'd have multiple lines of</p> <p>6 authority to whom might have an interest in this claim,</p> <p>7 so this may have been part of his divisional</p> <p>8 responsibilities.</p> <p>9 Q You mean Mr. Lemhoefer's?</p> <p>10 A Yes.</p> <p>11 Q Does the fact that Mr. Noe wrote this memo to</p> <p>12 Mr. Lemhoefer indicate that one of these individuals was</p> <p>13 in a position of authority over the other?</p> <p>14 A Not necessarily. You know, the division may</p> <p>15 have been Mr. Lemhoefer's responsibility whereas the</p> <p>16 technical responsibilities were that of Mr. Noe's.</p> <p>17 Q And when you say technical responsibilities,"</p> <p>18 what do you mean by that?</p> <p>19 A The actual nuts and bolts of resolving the</p> <p>20 claim.</p> <p>21 Q Okay. And Mr. Lemhoefer wouldn't deal with the</p> <p>22 actual nuts and bolts?</p> <p>23 A He certainly was not dealing with the nuts and</p> <p>24 bolts with respect to this claim. He may have had</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p>1 A Yes.</p> <p>2 Q It says: "I checked with two brokers and was</p> <p>3 unable to come anywhere near this pay-out for \$175,000</p> <p>4 cost"?</p> <p>5 A Yes.</p> <p>6 Q What do you take that statement to mean?</p> <p>7 A I read it literally that he checked with two</p> <p>8 brokers, and he wasn't able to come anywhere -- the</p> <p>9 question when it says near, that needs to probably be</p> <p>10 qualified; but near the pay-out cost for 175. So to me</p> <p>11 that simply means that he made an independent inquiry and</p> <p>12 got costs that were different.</p> <p>13 Q Would it be unusual for a person in Mr. Noe's</p> <p>14 position to make independent inquiries to find the lowest</p> <p>15 cost annuity in a case like this?</p> <p>16 MR. O'DRISCOLL: Object to the form. You may</p> <p>17 answer if you understand.</p> <p>18 THE WITNESS: I think I understood you to say</p> <p>19 would it be unusual. I don't think that it would be</p> <p>20 unusual. I mean you look around, and you make inquiry.</p> <p>21 That's pretty standard stuff.</p> <p>22 BY MR. LeBLANC:</p> <p>23 Q You see four lines above that is -- five lines</p> <p>24 it says: "Plaintiff's attorney agreed that if I would</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
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<p>1 division responsibility for the ocean marine operation,</p> <p>2 for example, which this claim fell as a part of, and so</p> <p>3 Mr. Noe was advising him that he was assigned to</p> <p>4 negotiate the settlement of the claim. It certainly</p> <p>5 doesn't appear that -- well, I would only be speculating.</p> <p>6 Q Do you see the stamp there. It says J.</p> <p>7 LaTorre, April 21st, maybe, 1983?</p> <p>8 A Yes.</p> <p>9 Q What does that indicate to you?</p> <p>10 A That indicates that the claim file handler</p> <p>11 stamped this memorandum on that date for his claim file.</p> <p>12 Q Would this 4-18-1983 memoranda be postjudgment</p> <p>13 or prejudgment?</p> <p>14 A This was postjudgment.</p> <p>15 Q Okay. As the person assigned to handle the</p> <p>16 case prejudgment, Mr. LaTorre would still review this</p> <p>17 document?</p> <p>18 A He very well obvious -- yeah, it appears that</p> <p>19 he very well did, at least the stamp would suggest he</p> <p>20 did.</p> <p>21 Q If you'd refer now to the second paragraph.</p> <p>22 A Yes.</p> <p>23 Q Twelve lines down that says "I checked with two</p> <p>24 brokers"?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p>1 pay \$175,000 and agreed to be nominal owner of the</p> <p>2 annuity, he would place it with an A rated life insurance</p> <p>3 company"?</p> <p>4 A Yes.</p> <p>5 Q When Mr. Noe writes "I would pay," what he</p> <p>6 really means is Kemper would pay?</p> <p>7 A Okay.</p> <p>8 Q Is that true, or is that what you understand</p> <p>9 that to be?</p> <p>10 A Yes.</p> <p>11 Q You don't think Mr. Noe was going to come up</p> <p>12 with \$175,000 out of his own pocket for this, right?</p> <p>13 A I do not.</p> <p>14 Q He was acting as a representative of Kemper in</p> <p>15 negotiating and including the settlement; is that right?</p> <p>16 A That's correct.</p> <p>17 Q Have you ever worked on a case, Mr. Mensie,</p> <p>18 where there were multiple quotes from different carriers</p> <p>19 for the same annuity terms?</p> <p>20 MR. O'DRISCOLL: Object to form. You may</p> <p>21 answer to the extent you understand it.</p> <p>22 THE WITNESS: Yes.</p> <p>23 BY MR. LeBLANC:</p> <p>24 Q And was it more than one case or just one?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 126</p> <p>1 A I can recall more than one.</p> <p>2 Q Is it common to get multiple quotes to find the</p> <p>3 best rate?</p> <p>4 A When you say "common," I have to qualify that.</p> <p>5 I mean out of all the cases that I've worked on it's not</p> <p>6 common as such, but it's not necessarily unusual.</p> <p>7 Q Okay. Can you give us a percentage of all the</p> <p>8 cases you've worked on how many there were multiple</p> <p>9 quotes on?</p> <p>10 A Just by recollection I'd suspect maybe, early</p> <p>11 days, probably oh, 10 to 20 percent maybe overall the</p> <p>12 universe of cases that I've worked on.</p> <p>13 MR. O'DRISCOLL: If I may have a point of</p> <p>14 clarification. Multiple quotes obtained by whom?</p> <p>15 MR. LeBLANC: The witness already answered the</p> <p>16 question so I think it's moot at this point.</p> <p>17 BY MR. LeBLANC:</p> <p>18 Q And when you say the "early days," what does</p> <p>19 that mean?</p> <p>20 A I was thinking of my own experiences.</p> <p>21 Q In your own experiences professionally or</p> <p>22 purchasing annuities for yourself?</p> <p>23 A Professionally.</p> <p>24 Q Okay. What's the percentage of annuity cases</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 128</p> <p>1 BY MR. LeBLANC:</p> <p>2 Q Mr. Mensie, if you'd turn to the second page of</p> <p>3 Exhibit 5, last line: "Thereafter I will close my</p> <p>4 interest without further report." What does Mr. Noe mean</p> <p>5 by that?</p> <p>6 A That he was concluding his assignment.</p> <p>7 Q And after the point that Mr. Noe concluded his</p> <p>8 assignment, would the responsibility for addressing any</p> <p>9 issues that arose after that point be his or somebody</p> <p>10 else's?</p> <p>11 A If they were issues that arose specific to his</p> <p>12 assignment, it would have been his to resolve.</p> <p>13 Q If you'd turn to K-0125.</p> <p>14 MR. O'DRISCOLL: All right. Handing the</p> <p>15 witness K-0125, K-0126.</p> <p>16 MR. LeBLANC: Just K-0125.</p> <p>17 MR. O'DRISCOLL: Well, oh, forgive me. Witness</p> <p>18 has K-0125.</p> <p>19 MR. LeBLANC: Thank you.</p> <p>20 BY MR. LeBLANC:</p> <p>21 Q Mr. Mensie, if you'd just let me know when</p> <p>22 you're done reviewing that document.</p> <p>23 A Okay. (Witness peruses document.)</p> <p>24 Okay.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 127</p> <p>1 that you handle right now?</p> <p>2 MR. O'DRISCOLL: Object to form. You may</p> <p>3 answer.</p> <p>4 THE WITNESS: I'm not directly involved --</p> <p>5 well, handle, can you qualify what you mean by "handle."</p> <p>6 BY MR. LeBLANC:</p> <p>7 Q By virtue of your position as a liability</p> <p>8 claims consultant, you handle claims by or made against</p> <p>9 or involving Kemper Insurance; is that right?</p> <p>10 A That's correct.</p> <p>11 Q Of those claims that you handle that you're</p> <p>12 assigned that you're responsible for, how many are</p> <p>13 annuity claims?</p> <p>14 A I see upwards of 20 annuity cases a week.</p> <p>15 Q And how many cases do you see a week?</p> <p>16 A I'm involved in maybe a hundred or so cases a</p> <p>17 week.</p> <p>18 MR. LeBLANC: I'd ask that K-0102 and K-0103 be</p> <p>19 marked as Exhibit 5.</p> <p>20 (Exhibit No. 5 was marked for</p> <p>21 identification.)</p> <p>22 MR. LeBLANC: Have those documents been marked?</p> <p>23 THE REPORTER: Yes.</p> <p>24 MR. LeBLANC: Thank you.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 129</p> <p>1 Q Based on this document -- or strike that.</p> <p>2 Sorry.</p> <p>3 Do you see where it's dated November 8,</p> <p>4 1983?</p> <p>5 A Yes.</p> <p>6 Q Mr. Mensie?</p> <p>7 A Yes.</p> <p>8 Q And again it's to Klaus Lemhoefer from J. L.</p> <p>9 Noe, do you see that?</p> <p>10 A Yes.</p> <p>11 Q The line below from it says previous comm.?</p> <p>12 A Yes.</p> <p>13 Q Is there anything marked next to that on your</p> <p>14 copy?</p> <p>15 A No.</p> <p>16 Q Would you expect that there would be something</p> <p>17 marked?</p> <p>18 A No. Seems consistent with the other documents.</p> <p>19 Q Okay. Is that a mechanism to track</p> <p>20 communications between individuals like a reference?</p> <p>21 A I suspect it could be used that way.</p> <p>22 Q Is there any other use that you know of for</p> <p>23 that?</p> <p>24 A It's -- it could be used if someone wanted to</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 130</p> <p>1 refer to previous communications, I suspect they could</p> <p>2 notate it to the extent that they wanted to do so. I</p> <p>3 don't know that it would be, you know, something that</p> <p>4 would be mandatory.</p> <p>5 Q Have you ever produced a report or a memorandum</p> <p>6 that looked like this?</p> <p>7 MR. O'DRISCOLL: Object to form. Unclear as to</p> <p>8 what it means to say "looked like this."</p> <p>9 THE WITNESS: I have produced memorandums along</p> <p>10 these lines, yes.</p> <p>11 BY MR. LeBLANC:</p> <p>12 Q Have you ever worked in a position similar to</p> <p>13 Mr. Noe's position for Kemper or any other insurance</p> <p>14 company?</p> <p>15 A Yes.</p> <p>16 Q Was that with Kemper?</p> <p>17 A I'm not sure I understand the question. I'll</p> <p>18 explain -- well, my understanding of what Mr. Noe's</p> <p>19 function and what he did. I have worked in similar</p> <p>20 positions of handling larger exposure cases, both for</p> <p>21 Kemper and for other carriers.</p> <p>22 Q Was this a larger exposure case?</p> <p>23 A As signified by Z, being a home office mandated</p> <p>24 file, I would say yes.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 132</p> <p>1 relative to a dispute.</p> <p>2 Q And in the Dimon versus Jenny C case whose</p> <p>3 responsibility would it be to resolve the dispute</p> <p>4 regarding the terms of the annuity?</p> <p>5 MR. O'DRISCOLL: Object to form.</p> <p>6 MR. DeWICK: I'll also object, Jed DeWick.</p> <p>7 THE WITNESS: If the dispute over the terms of</p> <p>8 the annuity took place after the case was assigned to Mr.</p> <p>9 Noe but to the extent that Mr. Noe's involvement in that</p> <p>10 matter as outlined in his memorandums this was a dispute</p> <p>11 that existed at least in his mind with the broker and</p> <p>12 Mr. Hughes. He specifically says that Mr. Hughes may</p> <p>13 file an action for declaratory relief. So that leads me</p> <p>14 to an understanding that Mr. Noe's thinking was that this</p> <p>15 was Mr. Hughes' dispute not Kemper's.</p> <p>16 MR. LeBLANC: Can we mark this as Exhibit 6, please.</p> <p>17 (Exhibit No. 6 was marked for</p> <p>18 identification.)</p> <p>19 THE REPORTER: Okay. It's marked.</p> <p>20 MR. O'DRISCOLL: Sorry, Peter. We're not</p> <p>21 missing a question, are we?</p> <p>22 MR. LeBLANC: No, not yet.</p> <p>23 BY MR. LeBLANC:</p> <p>24 Q Mr. Mensie, I'd ask that you look at a letter</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 131</p> <p>1 Q Do you see the first line of K-0125: "We have</p> <p>2 encountered some difficulty with Charter Security Life</p> <p>3 Insurance Company, New York, who issued the annuity</p> <p>4 policy"? Do you see that?</p> <p>5 A Yes.</p> <p>6 Q Does that indicate to you that Mr. Noe had some</p> <p>7 reason to believe there was a dispute regarding the terms</p> <p>8 of the annuity?</p> <p>9 A It seems to me in reading this memo in its</p> <p>10 entirety, he didn't think there was much of a dispute.</p> <p>11 He said there was a difficulty there. At least from his</p> <p>12 perspective he didn't see it as an issue.</p> <p>13 Q Do you know if Mr. Noe ever personally</p> <p>14 contacted anyone at Charter Security?</p> <p>15 A I have no independent knowledge of that.</p> <p>16 Q If you read the last line, second to the last</p> <p>17 paragraph: "If not, Mr. Hughes may file an action for</p> <p>18 declaratory judgment." Do you see where it says that?</p> <p>19 A Yes.</p> <p>20 Q Do you know what an action for declaratory</p> <p>21 judgment is?</p> <p>22 A Yes.</p> <p>23 Q What is that in your understanding?</p> <p>24 A Seeking the court's adjudication of a matter</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 133</p> <p>1 dated July 14, 1983. It's in the premarked exhibits.</p> <p>2 MR. O'DRISCOLL: I have it, July 14, 1983.</p> <p>3 THE WITNESS: I've reviewed it.</p> <p>4 BY MR. LeBLANC:</p> <p>5 Q Was Mr. Snyder an employee of Kemper?</p> <p>6 A No.</p> <p>7 Q What do you understand Mr. Snyder's role in the</p> <p>8 annuity application to be?</p> <p>9 A He was the broker for the plaintiff's attorney.</p> <p>10 Q And what do you mean he was the broker for the</p> <p>11 plaintiff's attorney?</p> <p>12 A There was communication that through Dean</p> <p>13 Witter, the plaintiff's attorney had been able to secure</p> <p>14 a quote for 240 months certain and life thereafter</p> <p>15 through Dean Witter.</p> <p>16 Q Did Kemper have any involvement in securing</p> <p>17 that quote?</p> <p>18 A No.</p> <p>19 Q I'd ask that you look at a letter dated August</p> <p>20 12, 1983.</p> <p>21 MR. O'DRISCOLL: August 12, 1983. Mr. Mensie</p> <p>22 has it in front of him.</p> <p>23 BY MR. LeBLANC:</p> <p>24 Q For the record this is a letter dated August</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 134</p> <p>1 12, 1983, to a Mr. Robert Foley from Mr. John Noe. Is</p> <p>2 that the document you have in front of you, sir?</p> <p>3 A Yes, I do.</p> <p>4 Q The first paragraph says: I received a</p> <p>5 replacement policy through Charter Security Life</p> <p>6 Insurance Company."</p> <p>7 A Changing the terms of the annuity for 240</p> <p>8 months, yes.</p> <p>9 Q Okay. Have you ever heard the term replacement</p> <p>10 policy in the context of an annuity?</p> <p>11 A No.</p> <p>12 Q What would you call an annuity that was issued</p> <p>13 and then corrected later?</p> <p>14 MR. O'DRISCOLL: Objection to form.</p> <p>15 BY MR. LeBLANC:</p> <p>16 Q Would you call it anything?</p> <p>17 A The policy that was issued and subsequently</p> <p>18 reissued with a change in the terms?</p> <p>19 Q Yes.</p> <p>20 A I would call that a new policy.</p> <p>21 Q Okay. Have you ever seen such a thing before?</p> <p>22 A Not a unilateral one. I've seen where all the</p> <p>23 parties have agreed and then a new policy was then</p> <p>24 issued.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 136</p> <p>1 Kemper was not involved in the settlement of the</p> <p>2 underlying case until after the judgment, I wouldn't</p> <p>3 think that I would see documentation relative to the</p> <p>4 involvement of the broker and the annuity vendors before</p> <p>5 the case was assigned to Mr. Noe.</p> <p>6 Q In 1983 did Kemper -- was Kemper in the</p> <p>7 business of issuing annuities?</p> <p>8 A I would think so, yes.</p> <p>9 Q And why wouldn't Kemper just buy an annuity</p> <p>10 from itself to cover this settlement?</p> <p>11 A I'm sorry I misunderstood your question.</p> <p>12 You're asking was Kemper a life company who issued</p> <p>13 annuities at that time?</p> <p>14 Q Yes.</p> <p>15 A I don't know. I'll have to say that. 1983,</p> <p>16 I'd have to -- yeah, I'm not sure.</p> <p>17 Q Would it be unusual for when Kemper was</p> <p>18 involved as the insurer to purchase an annuity from</p> <p>19 itself to cover a settlement like this?</p> <p>20 A That doesn't happen. I haven't had an</p> <p>21 experience where I've seen that happening. Usually the</p> <p>22 companies operate independent of each other if it's a</p> <p>23 stand-alone life insurance company that might issue an</p> <p>24 annuity. It wouldn't be that Kemper was purchasing an</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 135</p> <p>1 Q Have you seen any documents or can you tell us</p> <p>2 whether you know whether Charter Security was involved in</p> <p>3 the original Jenny C litigation?</p> <p>4 MR. O'DRISCOLL: Objection to form, but you may</p> <p>5 answer.</p> <p>6 THE WITNESS: I wouldn't think so. I mean I</p> <p>7 haven't seen anything, and it wouldn't seem that they</p> <p>8 would be; but I would not know from the documents that</p> <p>9 I've seen.</p> <p>10 BY MR. LeBLANC:</p> <p>11 Q So you can't tell us one way or the other, is</p> <p>12 that true?</p> <p>13 A Not independent -- not specifically per a</p> <p>14 document I cannot say would make much sense but who</p> <p>15 knows.</p> <p>16 MR. O'DRISCOLL: I'm sorry. Was that a</p> <p>17 question?</p> <p>18 BY MR. LeBLANC:</p> <p>19 Q Yes. Why wouldn't it make sense?</p> <p>20 A Well, in the context of this litigation let me</p> <p>21 say that then -- let me qualify by saying that then in</p> <p>22 the context of this litigation. The normal course of</p> <p>23 things would be that, you know, annuity brokers are</p> <p>24 involved in the course of the settlement; and since</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 137</p> <p>1 annuity from itself.</p> <p>2 I mean Kemper was at one time in the</p> <p>3 business of life insurance policies. Whether or not they</p> <p>4 were still in the business in 1983, I can't speak to that</p> <p>5 today; but even if they were, you know, you go outside to</p> <p>6 the vendors, and it would be based upon the competitive</p> <p>7 rates.</p> <p>8 Q Do you know if this letter dated August 12,</p> <p>9 1983, was in the claim file?</p> <p>10 A I don't recall having seen it.</p> <p>11 Q Do you know if there were any letters involving</p> <p>12 the disputes in the claim file?</p> <p>13 MR. O'DRISCOLL: Objection to form as far as</p> <p>14 any letters regarding the dispute, but you may answer to</p> <p>15 the extent --</p> <p>16 THE WITNESS: To the extent of my recollection,</p> <p>17 my independent recollection is that I don't really recall</p> <p>18 specifically. I gathered up the claim file documents as</p> <p>19 soon as I realized that there were documents related to</p> <p>20 the annuity and sent the file to counsel.</p> <p>21 BY MR. LeBLANC:</p> <p>22 Q Would it have been Kemper's procedure at the</p> <p>23 time in 1983 for Mr. Noe to keep a separate file of his</p> <p>24 own regarding a claim he was working on?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 138</p> <p>1 A It's possible.</p> <p>2 Q And do you know what the procedure would be for</p> <p>3 Mr. Noe to send his file to Kemper or hold on to his file</p> <p>4 for a certain period of time? Do you have a procedure</p> <p>5 for that?</p> <p>6 A Yeah. Ordinarily if there were documents that</p> <p>7 related to the claim file within his working file, if he</p> <p>8 had such an animal, then he would have -- at the time the</p> <p>9 file was closed he would have sent those documents to the</p> <p>10 claim file. That wouldn't be an unusual process.</p> <p>11 Q Refer to Exhibit 5, the second page.</p> <p>12 A Yes.</p> <p>13 Q Where it says, the second line from the bottom:</p> <p>14 "...my copy of the claim file to Mr. Moore."</p> <p>15 A Yes.</p> <p>16 Q Would that lead you to believe that Mr. Noe had</p> <p>17 his own copy of the claim file?</p> <p>18 A Yes.</p> <p>19 Q Okay. And do you know what happened to that</p> <p>20 copy of the claim file?</p> <p>21 A I do not.</p> <p>22 Q What would be the procedure -- a technical</p> <p>23 claims individual had a copy of a claim file, what would</p> <p>24 be their procedure for getting that file to Kemper?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 140</p> <p>1 were writing directly to him, absolutely.</p> <p>2 Q Directly to him at the home office even though</p> <p>3 that's not where he worked?</p> <p>4 MR. O'DRISCOLL: Object to the form.</p> <p>5 THE WITNESS: He may not have been physically</p> <p>6 located at the home office at all times because he was</p> <p>7 mobile, but I wouldn't qualify it as him not actually</p> <p>8 working at the home office.</p> <p>9 MR. LeBLANC: Mr. O'Driscoll, if you could hand</p> <p>10 the witness the letter dated September 26, 1983 to John</p> <p>11 Noe.</p> <p>12 MR. O'DRISCOLL: Mr. Mensie has that in front</p> <p>13 of him now.</p> <p>14 BY MR. LeBLANC:</p> <p>15 Q Mr. Mensie, using the September 26, 1983 letter</p> <p>16 as an example, describe for me what the procedure would</p> <p>17 be once this letter was received at the home office in</p> <p>18 Long Grove, Illinois?</p> <p>19 A It would have been directed to Mr. Noe.</p> <p>20 Q Could anything be done with it before it was</p> <p>21 directed to Mr. Noe?</p> <p>22 A No, I wouldn't think so.</p> <p>23 Q Okay. So the only copy of this letter that</p> <p>24 Kemper would have would be in Mr. Noe's file?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 139</p> <p>1 MR. O'DRISCOLL: Object to the form.</p> <p>2 To the extent you understand, you may</p> <p>3 answer.</p> <p>4 THE WITNESS: I'm not sure I understood the</p> <p>5 question. But if it's a copy of a file and it's actually</p> <p>6 a replica and he has a copy for his purposes of working</p> <p>7 the file while being away from the actual file that's</p> <p>8 housed at the claims office, there's two options. You</p> <p>9 know, if there's added information, you know, at the time</p> <p>10 the file is closed, he would send it back; but I doubt</p> <p>11 seriously as a practical matter that he would send back</p> <p>12 an entire copy because it's a duplication.</p> <p>13 BY MR. LeBLANC:</p> <p>14 Q Okay. And when an individual like Mr. Noe who</p> <p>15 has documents sent to his home address also received</p> <p>16 documents in Long Grove, when those documents were</p> <p>17 received in Long Grove, what would be Kemper's policy and</p> <p>18 procedure regarding those documents?</p> <p>19 A They would have been sent to Mr. Noe.</p> <p>20 Q Without making a copy?</p> <p>21 A Without making a copy.</p> <p>22 Q Okay. So Mr. Noe may have been in possession</p> <p>23 of original documents?</p> <p>24 A If he had communications with individuals that</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 141</p> <p>1 A Unless Mr. Noe sent it to the claim file, that</p> <p>2 would be correct.</p> <p>3 Q Okay. And referring back to 0103, Exhibit 5,</p> <p>4 page 2 where it says "...my copy of the claim file to Mr.</p> <p>5 Moore," would this original letter that was only in Mr.</p> <p>6 Noe's possession be made part of the claim file that's in</p> <p>7 Kemper's possession?</p> <p>8 A I would think -- well, I'm not sure I</p> <p>9 understood the question.</p> <p>10 Q How would this letter dated September 26, 1983,</p> <p>11 get into the files of Kemper?</p> <p>12 A Mr. Noe would have to have either physically</p> <p>13 put it there or have sent it to the claim file.</p> <p>14 Q Do you know if he did that?</p> <p>15 A There's nothing here that I -- well, there's</p> <p>16 nothing here that I can decipher from that would tell me</p> <p>17 one way or the other.</p> <p>18 Q Do you know if Kemper had any direct contact</p> <p>19 with Mr. Dimon in 1983?</p> <p>20 A I wouldn't think so. Mr. Dimon was represented</p> <p>21 by counsel, so Kemper's contact would have been with</p> <p>22 Mr. Dimon's attorney.</p> <p>23 Q Mr. Mensie, what would you expect to be</p> <p>24 contained in an annuity contract?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 142</p> <p>1 MR. O'DRISCOLL: Object to form, but you may 2 answer. 3 THE WITNESS: In the contract itself? 4 BY MR. LeBLANC: 5 Q Yes. 6 A The terms of the agreement. 7 Q Is there a certain document or documents that 8 you would expect to see setting forth the terms of the 9 agreement? 10 A The contract itself. 11 Q Do you know if it would come in any parts, or 12 would you expect to see addendums or anything like that? 13 A I don't necessarily expect them, but there are 14 occasions when the contracts contain addendums, the 15 contracts that come in various forms and various 16 fashions; but the essence of the question at least to my 17 extent that I understand it, I would expect to see the 18 terms of the agreement within the contract. 19 Q Mr. Mensie, I'd like you to look at what's been 20 marked as K-001 and 002? 21 MR. O'DRISCOLL: The first two documents? 22 MR. LeBLANC: Yes. 23 MR. O'DRISCOLL: K-001 and K-002 documents 24 produced by Kemper, the witness has them. PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 144</p> <p>1 A I just testified after having uncovered that 2 the annuity file did not contain contract information, I 3 initiated an investigation to try to piecemeal this 1983 4 claim. 5 Q Okay. So sometime between when you discovered 6 the annuity claim file contained two pages and the seven 7 inch stack of documents you found in the claim file -- 8 A Right. 9 Q -- you found a copy of this check? 10 A Yeah, the checks were -- the checks were 11 uncovered sometime ago, yes. 12 Q And where were these checks uncovered from? 13 A The data on checks were in a computer so that's 14 why I looked to the computer source for those, so the 15 financial records were there. Being that this was such 16 an old matter, I didn't suspect that the paper contents 17 would be available; but the financial data was kept in 18 the computer. 19 Q In addition to these checks, these two pages, 20 K-001 and K-002, was there any other financial data in 21 the system? 22 A I wasn't searching for any other financial 23 data. I'm sure that that data exists, but my specific 24 search was -- my search was specific to this check. PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 143</p> <p>1 BY MR. LeBLANC: 2 Q Mr. Mensie, what was the first time you saw 3 these two documents? 4 A After the litigation it's a part of the search 5 to obtain as much information as I could regarding the -- 6 the circumstances surrounding the litigation that was 7 filed against Kemper, I initiated an action to recover a 8 copy of the checks since my annuity file did not contain 9 the actual contract. 10 Q Okay. And then when was that? 11 A I don't have any independent recollection of 12 the actual date. 13 Q Can you give me a time frame? 14 A It was post having received the suit in this 15 matter, and without additional references I really 16 couldn't say. 17 Q You testified earlier that you made an initial 18 request for documents and that what was marked as 19 Exhibit -- I'm sorry, not Exhibit, K-003 and K-004 were 20 discovered? 21 A Correct. 22 Q Did you discover this check at the same time? 23 A No. 24 Q When did you discover this check? PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 145</p> <p>1 Q Did you provide copies of disks to your 2 attorneys with other financial data that's in the system? 3 A No. 4 Q So that information hasn't been disclosed to 5 any of the parties in this case yet, has it? 6 A The financial information that's in this 7 system? You now have the claim file, so you now have the 8 financial data as well. 9 Q Well, we now have part of the claim file. Do 10 you understand that we don't have all of the claim file? 11 MR. O'DRISCOLL: As we went over, the part of 12 the claim file that's responsive to the document request 13 in this case you have. 14 BY MR. LeBLANC: 15 Q Okay. Is the claim file and the financial data 16 on the system the same thing in your mind, Mr. Mensie? 17 A The claim file and the financial data? The 18 financial data is a part of the claim file. 19 Q So the claim file under Kemper's system 20 includes both hard copy or paper copy and electronic 21 documents? 22 A Well, in '83 the claim file was hard copy 23 material, and financial data was both hard copy and 24 computerized. They were issuing checks off the computers PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 146</p> <p>1 so, therefore, you had a computer record of the check</p> <p>2 that was issued, but you also had the actual copy of the</p> <p>3 check which apparently -- which was stored on a</p> <p>4 microfiche I believe, some type of disk. I'm not sure</p> <p>5 how it's actually stored so let me back off of that</p> <p>6 answer.</p> <p>7 Q Okay. Did you provide copies of the computer</p> <p>8 records, the financial data stored on the computer, to</p> <p>9 your attorney?</p> <p>10 A No. I provided copies of the copy check that</p> <p>11 we have before us.</p> <p>12 Q So there are records stored at Kemper on the</p> <p>13 computer that haven't been provided to your attorney yet?</p> <p>14 MR. O'DRISCOLL: Well, as Mr. Mensie has</p> <p>15 testified --</p> <p>16 MR. LeBLANC: Let's have the witness answer.</p> <p>17 Is this an objection?</p> <p>18 MR. O'DRISCOLL: Yes. I mean it's been asked</p> <p>19 and answered. He testified he provided the entire claim</p> <p>20 file to me.</p> <p>21 MR. LeBLANC: Then the witness can answer the</p> <p>22 question.</p> <p>23 MR. O'DRISCOLL: All right. It's been asked</p> <p>24 and answered, but we can do it one more time.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 148</p> <p>1 this was what was furnished.</p> <p>2 Q And do you know if there's a more legible copy</p> <p>3 of this?</p> <p>4 A We now have the claim file. I think there's --</p> <p>5 MR. O'DRISCOLL: Yes, at this point -- well, I</p> <p>6 would note for the record that K-0001 appears to be the</p> <p>7 same document as the lower portion of K-0123. It clearly</p> <p>8 is the same document.</p> <p>9 THE WITNESS: It is.</p> <p>10 MR. O'DRISCOLL: So all counsel have a very</p> <p>11 clear copy of K-001 now in the form of K-0123.</p> <p>12 BY MR. LeBLANC:</p> <p>13 Q Mr. Mensie, is it your testimony that K-001 is</p> <p>14 the same copy or is the same document as represented in</p> <p>15 K-0123?</p> <p>16 MR. O'DRISCOLL: I will hand to the witness</p> <p>17 K-0123 at this time so that he can make a comparison.</p> <p>18 THE WITNESS: Yes, as signified by the fact</p> <p>19 that you can see where it says claim check No.</p> <p>20 250-0-008-585.</p> <p>21 BY MR. LeBLANC:</p> <p>22 Q But based on that you're saying these are two</p> <p>23 of exactly the same document?</p> <p>24 A Yes.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 147</p> <p>1 THE WITNESS: All right. I provided my</p> <p>2 attorney with the contents of the claim files which</p> <p>3 contain the hard copy data as it existed when we were</p> <p>4 able to locate it. I have not provided any</p> <p>5 computer-generated data to counsel with respect to this</p> <p>6 matter.</p> <p>7 BY MR. LeBLANC:</p> <p>8 Q Okay. And that computer-generated data exists?</p> <p>9 A There is something that exists on the computer</p> <p>10 relative to the financial transactions that took place on</p> <p>11 this claim file, yes.</p> <p>12 Q We're going to suspend on the issue of the</p> <p>13 computer data that haven't been disclosed yet to the</p> <p>14 parties.</p> <p>15 If you refer to K-001 and K-002.</p> <p>16 A Yes.</p> <p>17 Q Which appears to be a check from Kemper Group</p> <p>18 front and back copy?</p> <p>19 A Okay. Yes.</p> <p>20 Q Is that the microfiche or microform copy of the</p> <p>21 check to your knowledge?</p> <p>22 A Again as I said, I'm not sure exactly how the</p> <p>23 data was actually stored, but this was in response to my</p> <p>24 request for a copy of the check from the computer system,</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 149</p> <p>1 Q Mr. Mensie?</p> <p>2 A Yes.</p> <p>3 Q Is that your testimony that it is the exact</p> <p>4 same document?</p> <p>5 A It was my testimony that these appear to be the</p> <p>6 exact same document, again as signified by the check</p> <p>7 number because the other part is not legible. So I mean</p> <p>8 I'm not -- you know, the check numbers are the same; and</p> <p>9 from what you can read on them they appear to be the same</p> <p>10 document. It was the document that I was searching for</p> <p>11 and so, yes, the answer is yes.</p> <p>12 Q So your initial search yielded four pages of</p> <p>13 documents; is that true?</p> <p>14 A To the best of my recollection my initial</p> <p>15 search uncovered a memorandum -- my initial search</p> <p>16 uncovered the material that was contained in the annuity</p> <p>17 file which appears to have been the memorandum that we</p> <p>18 discussed earlier. A subsequent search uncovered the</p> <p>19 check.</p> <p>20 Q And then a subsequent search uncovered the</p> <p>21 seven inches of documents which were partially disclosed</p> <p>22 this week; is that true?</p> <p>23 A I can speak to the retrieval. I can't speak to</p> <p>24 what was disclosed. So in answer to your question, yes,</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 150</p> <p>1 we located the claim file. The claim file was given to 2 counsel, and counsel reviewed it and disclosed -- at my 3 understanding disclosed the information in accordance 4 with the request. 5 Q Do you agree with me that there were many, many 6 more documents in the claim file than what has been 7 disclosed by counsel thus far? 8 MR. O'DRISCOLL: Objection to form. Also 9 asked and answered and objected to at that time. 10 BY MR. LeBLANC: 11 Q Mr. Mensie? 12 A Many, many more, again, I don't know how to 13 qualify that. Only thing I can say for the record is 14 that the entire contents of the claim file were 15 transmitted to counsel in the most expeditious manner 16 that we could, overnight delivery. Counsel reviewed it 17 and my understanding is disclosed documents that he was 18 required to do. 19 Q Okay. So you understand that counsel disclosed 20 128 pages -- actually 124 pages the day before yesterday 21 just before close of business, you understand that, 22 right? 23 A I understand your -- that you have made that 24 indication, yes. <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p> </p>	<p style="text-align: right;">Page 152</p> <p>1 A Okay. 2 MR. LeBLANC: I'm going to take a quick break. 3 MR. O'DRISCOLL: Okay. Five minutes. 4 (Whereupon a short recess was had, 5 after which the preceding deposition 6 continued as follows:) 7 MR. O'DRISCOLL: Peter, was there a question? 8 MR. LeBLANC: There will be shortly. 9 BY MR. LeBLANC: 10 Q Mr. Mensie. 11 A Okay. 12 Q Will you please look at document K-0009. 13 MR. O'DRISCOLL: Okay. The witness has 14 K-0009. 15 BY MR. LeBLANC: 16 Q Okay. Can you tell me the date on that 17 document? 18 A 7-18-83. 19 Q Okay. And to whom is the document addressed? 20 A It's addressed to Mr. LaTorre, J. LaTorre. 21 Q From whom is it? 22 A I'm sorry. 23 Q Who wrote it? 24 A Who wrote it? It doesn't specify an author. <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p> </p>
<p style="text-align: right;">Page 151</p> <p>1 Q Okay. And your reference was seven inches of 2 documents in the claim file? 3 A Well, if it turns out that it's three inches, 4 then my measurement tool is off; but as best I can 5 reflect and measure it from a physical observation, 6 whatever it is, it is. You know, if it's five inches, 7 it's five inches. It's the entire claim file contents. 8 Q But Mr. Mensie, you're the only one of all of 9 us other than Mr. O'Driscoll who knows what it is. 10 A Okay. Well, it is what it is. You qualifying 11 it -- I represented to you that I -- my estimation was 12 seven, but my estimation may be not accurate. It may be 13 five. 14 Q How many pages? 15 A Oh, I didn't count the number of pages. 16 Q Can you estimate how many pages? 17 A No. It was more than 10, perhaps less than a 18 thousand, I don't know. I didn't count them. 19 Q It was more than ten and less than a thousand? 20 A That would be a guess. 21 Q It obviously was more than 128, isn't that 22 true? 23 A Yes, that's true. Counsel -- 24 Q So it's more than 128 but less than a thousand? <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p> </p>	<p style="text-align: right;">Page 153</p> <p>1 Q Does it under the return to line, do you see a 2 name there? 3 A Yes, it says J. L. Noe. 4 Q And it's regarding Dimon versus Jenny C? 5 A It is. 6 Q Can you read the remainder of the document to 7 yourself if you haven't already? 8 A I have. 9 Q Okay. And what is this document -- what does 10 this document direct Mr. LaTorre to do? 11 A To copy the annuity and send the original to 12 Mr. Klaus Lemhoefer for long-term presentation under the 13 special procedures for structured settlements. 14 MR. O'DRISCOLL: Preservation. 15 THE WITNESS: Preservation, is it? Yes. 16 BY MR. LeBLANC: 17 Q Do you see special procedures that were noted 18 in the memo to Mary Graci, document K-006? 19 MR. O'DRISCOLL: I hand the witness K-006. 20 If you know. 21 THE WITNESS: Yes, seems to be. 22 BY MR. LeBLANC: 23 Q Okay. Do you have a copy of those procedures 24 or have you ever seen a copy of those procedures? <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p> </p>

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<p style="text-align: right;">Page 154</p> <p>1 A Yes, they're the procedures that I described to 2 you. Well, let me check that. The procedures that I 3 understood to be in place, I don't have any memorandums 4 in '83, but the procedures as I understood them to be in 5 place are the ones that are in place today where the 6 original contracts are sent here to the home office where 7 they're logged and stored.</p> <p>8 Q Okay. And why would there be a special 9 procedure for structured settlements?</p> <p>10 A I don't know. Retention policies were probably 11 different, but I'm again speculating here. You know, you 12 wouldn't keep the claim file as long as you would have 13 kept an annuity, so they may have come up with some 14 special procedure for separating the two.</p> <p>15 Q Does it have to do with the length of time that 16 the contract goes on for, the fact that it's --</p> <p>17 A Again that would seem to make sense, but 18 speculating as to what they did, but that certainly makes 19 sense.</p> <p>20 Q Is there anyone at Kemper currently who would 21 know why the document retention policy requires special 22 procedures for structured settlement?</p> <p>23 A The people who implemented those procedures are 24 no longer Kemper employees. I suspect they would be the PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 156</p> <p>1 individuals are no longer Kemper employees, is that 2 because you know for a fact as the representative of 3 Kemper that they no longer work at Kemper, or is that 4 just based on who you see around the office?</p> <p>5 A From an administrative fact I know the 6 employees here. I don't really know how to answer that 7 question. To the best of my knowledge Mr. Bennett is not 8 an employee -- is no longer an employee of Kemper.</p> <p>9 Q Throughout the course of this deposition we 10 talked about people being in a New York City office or 11 people being regional representatives like Mr. Noe.</p> <p>12 A Right.</p> <p>13 Q Does Kemper have that anymore?</p> <p>14 A No.</p> <p>15 Q Mr. Mensie?</p> <p>16 A I said no.</p> <p>17 Q Okay. I didn't hear your response. I'm sorry. 18 So all of Kemper's employees as we speak, 19 every single person employed by Kemper, works in the same 20 building?</p> <p>21 A To the best of my knowledge, yes.</p> <p>22 Q Do you know if a copy of Mr. Boncher's April 23 12, 1983 memo and Mr. Bennett's outline of the procedure 24 still exists? PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 155</p> <p>1 only ones that could speak to why they did so.</p> <p>2 Q You know for a fact that they're no longer 3 Kemper employees?</p> <p>4 A The individuals that I'm looking at, their 5 names, Mr. Lemhoefer is no longer an employee; and we 6 went through the list previously. They're no longer 7 employees, that is correct.</p> <p>8 Q If you refer back to K-006.</p> <p>9 A Yes.</p> <p>10 Q It says: I am attaching a copy of R. W. 11 Boncher's April 12, 1983 memo and Frank Bennett's outline 12 of these procedures?</p> <p>13 A Yes.</p> <p>14 Q Do you know who Mr. Boncher is?</p> <p>15 A He was a Kemper employee at the time.</p> <p>16 Q And he's no longer a Kemper employee?</p> <p>17 A That's correct.</p> <p>18 Q And Mr. Bennett?</p> <p>19 A He's no longer a Kemper employee.</p> <p>20 Q How do you know he's not a Kemper employee?</p> <p>21 A Kemper employees are housed here in Long Grove 22 now, and I don't know a Mr. Bennett within the claim 23 department.</p> <p>24 Q Okay. So when you're saying that these PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 157</p> <p>1 MR. O'DRISCOLL: I'm sorry. What document are 2 you referring to? April -- what was the date?</p> <p>3 MR. LeBLANC: Mr. Boncher's April 12, 1983 --</p> <p>4 MR. O'DRISCOLL: Okay.</p> <p>5 BY MR. LeBLANC:</p> <p>6 Q And Frank Bennett's outline of the procedure, 7 do they still exist?</p> <p>8 A A procedure memo exists. Whether or not that 9 memo actually has the author's name attached to it, I 10 don't have any independent recollection of it.</p> <p>11 Q When it says handling files involving annuity 12 settlements in that same paragraph. Special procedures 13 to be followed for handling files involving annuity 14 settlements.</p> <p>15 A Okay.</p> <p>16 Q I'm sorry. Do you see that section?</p> <p>17 A The paragraph you're referring to beginning 18 with the annuity report?</p> <p>19 Q Yes.</p> <p>20 A Yes.</p> <p>21 Q Is that an -- would you call that a document 22 retention policy?</p> <p>23 A The purpose of it was to retain the documents 24 separate from the claim file, so to that extent it was a PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 158</p> <p>1 retention procedure.</p> <p>2 Q And do you see the last line of that K-006</p> <p>3 memoranda: The annuity report should be completed at</p> <p>4 this time and the additional documentation should be sent</p> <p>5 upon receipt by your office?</p> <p>6 A Yes.</p> <p>7 Q Okay. What's the annuity report?</p> <p>8 A In 1983 it's the document that you have that's</p> <p>9 the first document that we referred to earlier as a check</p> <p>10 list.</p> <p>11 Q And how do you know that first document is the</p> <p>12 annuity report?</p> <p>13 A Because it says structured settlement check-off</p> <p>14 sheet.</p> <p>15 Q But that doesn't say annuity report?</p> <p>16 A Well, that's what I'm interpreting it to be.</p> <p>17 Q You're just basing that on your guess. You</p> <p>18 don't know for a fact that this first page, K-005, is</p> <p>19 what's referred to in K-006?</p> <p>20 A I'm reading this retrospectively, and that's --</p> <p>21 to the best of my knowledge that's what this document</p> <p>22 reflects. It looks similar to the ones that exist today.</p> <p>23 Q Can you refer down to the end of the text on</p> <p>24 K-006, there's initials BFB/LZ?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 160</p> <p>1 Q Do you type your own documents that you produce</p> <p>2 for Kemper?</p> <p>3 MR. O'DRISCOLL: Objection to form. I have no</p> <p>4 idea what the relevance of that is, but, you know, you</p> <p>5 can answer it.</p> <p>6 THE WITNESS: Yes, I type some I guess. Since</p> <p>7 1983 things have changed quite a bit. Most communication</p> <p>8 now is done by email so to that extent, yes, I type my</p> <p>9 own documents.</p> <p>10 BY MR. LeBLANC:</p> <p>11 Q Okay. Do you have someone in your office that</p> <p>12 helps you with typing documents or types documents for</p> <p>13 you?</p> <p>14 A No. I mean there are clerical support people</p> <p>15 who will assist you should you need assistance in typing</p> <p>16 documents or transmitting correspondence or whatever the</p> <p>17 case may be; but in terms of a specific task, do I have</p> <p>18 someone who does that for me? No.</p> <p>19 MR. O'DRISCOLL: Is there a question, Peter?</p> <p>20 MR. LeBLANC: There will be.</p> <p>21 BY MR. LeBLANC:</p> <p>22 Q Now, if you refer back to K-0009, and also I'd</p> <p>23 like you to look at K-0008.</p> <p>24 A Yes.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 159</p> <p>1 A Okay. Yes.</p> <p>2 Q Who is BFB?</p> <p>3 A I don't know.</p> <p>4 Q Whose initials would you expect to see there?</p> <p>5 A Could be the typist. Back in '83, this may</p> <p>6 have been dictated. I'm not certain.</p> <p>7 Q Do you know who LZ is or what that stands for?</p> <p>8 A I do not.</p> <p>9 Q If you'd look at the next page, K-007.</p> <p>10 A Okay.</p> <p>11 Q And at the end of the text again we see the</p> <p>12 initials JLN:JD.</p> <p>13 A Okay.</p> <p>14 Q And do you see that that document is from J. L.</p> <p>15 Noe?</p> <p>16 A Yes.</p> <p>17 Q Is it or was it Kemper's procedure in 1983 when</p> <p>18 they had documents typed to indicate who the author is in</p> <p>19 capital letters with a slash or a colon and who the</p> <p>20 typist was in lower case letters?</p> <p>21 A I don't have any independent recollection or</p> <p>22 knowledge of that. From the materials that I've reviewed</p> <p>23 I don't -- there's nothing I can draw that inference</p> <p>24 from.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 161</p> <p>1 Q Does K-008 -- sorry. Is K-0009 directed to Mr.</p> <p>2 LaTorre, Mr. LaTorre?</p> <p>3 A Yes.</p> <p>4 Q And K-008 is from Mr. LaTorre to Mr. Lemhoefer?</p> <p>5 A Yes.</p> <p>6 Q K-008 says: Herewith attached is annuity</p> <p>7 contract and note from Mr. J. L. Noe.</p> <p>8 A Yes.</p> <p>9 Q Why would Mr. LaTorre send Mr. Lemhoefer the</p> <p>10 annuity contract?</p> <p>11 A I would only be speculating, but in the sense</p> <p>12 of following consistent with the procedures that they're</p> <p>13 discussing Mr. Lemhoefer may have had charge of the</p> <p>14 setting or establishing the annuity claim file.</p> <p>15 Q Is that a responsibility that would be</p> <p>16 delegated to someone in Mr. Lemhoefer's position?</p> <p>17 A It may have fell within his responsibilities</p> <p>18 just as it is within mine at this point.</p> <p>19 Q Mr. Mensie, I refer you to K-0025.</p> <p>20 MR. O'DRISCOLL: The witness has the document.</p> <p>21 BY MR. LeBLANC:</p> <p>22 Q Tell me what this document is.</p> <p>23 MR. O'DRISCOLL: If you can. Take a moment to</p> <p>24 look at it.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 162</p> <p>1 THE WITNESS: Not independent of other</p> <p>2 information, no.</p> <p>3 BY MR. LeBLANC:</p> <p>4 Q And in reference to other information could you</p> <p>5 tell us what it is?</p> <p>6 A Depending on what information that would be.</p> <p>7 Q Do you have any information that would lead you</p> <p>8 to an understanding of what this document is?</p> <p>9 A I do not independent of matching it with</p> <p>10 something for which I have not done, so in its context</p> <p>11 alone I have no idea.</p> <p>12 Q Mr. Mensie, I refer you to document K-0028.</p> <p>13 MR. O'DRISCOLL: Okay. The witness has the</p> <p>14 document.</p> <p>15 MR. LeBLANC: Thank you.</p> <p>16 BY MR. LeBLANC:</p> <p>17 Q Do you know if there's a cleaner copy of this</p> <p>18 document in Kemper's possession?</p> <p>19 A I do not.</p> <p>20 Q I notice that some of the letters are pretty</p> <p>21 crisp, but this letter is a pretty poor quality. Do you</p> <p>22 know if that reflects what quality the letter was in the</p> <p>23 claim file, how the letter was copied to the claim file?</p> <p>24 A I'm not sure of the -- I'm not sure which is</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 164</p> <p>1 of today?</p> <p>2 A Financial -- yeah, my understanding -- yes, I</p> <p>3 think it does. Yes.</p> <p>4 Q Is there still letterhead that says American</p> <p>5 Motorists on it?</p> <p>6 A Yes.</p> <p>7 Q And are they still part of the Kemper Group?</p> <p>8 A Yes.</p> <p>9 Q Do you know of any employees of American</p> <p>10 Motorists or anyone that worked for Kemper at American</p> <p>11 Motorists is still employed by Kemper?</p> <p>12 MR. O'DRISCOLL: If you know.</p> <p>13 THE WITNESS: I don't really understand the</p> <p>14 question. If you understand the context of the personnel</p> <p>15 that work for Kemper work under the banner of Kemper,</p> <p>16 work for all of the companies that fall within the</p> <p>17 umbrella of the Kemper group of companies that are doing</p> <p>18 business.</p> <p>19 BY MR. LeBLANC:</p> <p>20 Q So using Mr. Noe as an example, you would sign</p> <p>21 documents as home claim American Motorists Insurance</p> <p>22 Company. Do you know whether or not someone in Mr. Noe's</p> <p>23 position would also sign documents indicating that he was</p> <p>24 an employee of Lumbermen's Mutual?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 163</p> <p>1 the case. These documents were very old, and some were</p> <p>2 even actually brittle in '83 so...</p> <p>3 Q I refer you to K-0030.</p> <p>4 MR. O'DRISCOLL: Okay. Mr. Mensie has the</p> <p>5 document.</p> <p>6 BY MR. LeBLANC:</p> <p>7 Q Single document K-0030. Do you have the</p> <p>8 document --</p> <p>9 MR. O'DRISCOLL: Yes, he does. Yes.</p> <p>10 BY MR. LeBLANC:</p> <p>11 Q And the document in the second paragraph: You</p> <p>12 may not be aware that on April 18, 1983, Internal Revenue</p> <p>13 Service served a levy on American Motorists at Quincy,</p> <p>14 Massachusetts?</p> <p>15 A Yes.</p> <p>16 Q Did American Motorists have an office in</p> <p>17 Quincy, Massachusetts?</p> <p>18 A This letter doesn't give an indicator one way</p> <p>19 or the other. It could certainly have been if they did</p> <p>20 business in Massachusetts, they may have had a person to</p> <p>21 whom could be served with those documents. So in answer</p> <p>22 to your question I don't recall a Quincy, Massachusetts</p> <p>23 office.</p> <p>24 Q Okay. Does American Motorists still exist as</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 165</p> <p>1 A It wouldn't be inconsistent to do that.</p> <p>2 Q Now, would someone in Mr. Noe's position be</p> <p>3 authorized to act on behalf of each of the insurance</p> <p>4 companies listed under the Kemper Group?</p> <p>5 A Yes. To the extent of that person's position,</p> <p>6 so if a claim came in and it involved one of those Kemper</p> <p>7 companies, yes.</p> <p>8 Q Now, how many people are currently employed by</p> <p>9 Kemper?</p> <p>10 A Less than 300.</p> <p>11 Q Total?</p> <p>12 A Total.</p> <p>13 Q 1983 do you have any idea how many people were</p> <p>14 employed by Kemper?</p> <p>15 A Probably in excess of 3,000. Well, let me</p> <p>16 qualify that. The last numbers I have date back to 2000</p> <p>17 so 1983, you know, we're still talking a number of years.</p> <p>18 So, no, I do not know in 1983 what that number was.</p> <p>19 Q Okay. But you do know that there was more than</p> <p>20 one office?</p> <p>21 A Yes.</p> <p>22 Q They had offices in, based on the documents,</p> <p>23 Quincy, New York, Illinois, New Jersey; is that true?</p> <p>24 A That's true.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 166</p> <p>1 Q Okay. If you'd turn to page K-0031 entitled</p> <p>2 Release of Levy.</p> <p>3 A Yes.</p> <p>4 Q Do you know what this document does, what</p> <p>5 affect this document has?</p> <p>6 A It's an — rephrase the question. Maybe I can</p> <p>7 answer it better. I'm not really sure I understand the</p> <p>8 question. It's a levy against — issued by the Internal</p> <p>9 Revenue Service for I think there was some other — there</p> <p>10 was a transcript, if memory serves me correct, of the</p> <p>11 proceedings pertaining to this levy.</p> <p>12 Q Proceedings pertaining to the levy, and you saw</p> <p>13 a transcript of that?</p> <p>14 A I thought I saw something. I did not — I'd</p> <p>15 have to refer back to the documents. No, it just</p> <p>16 followed in order of the transcript. Okay. I did see</p> <p>17 this document within the claim file, yes.</p> <p>18 Q Did you see any other documents related to the</p> <p>19 IRS in the claim file that you recall?</p> <p>20 A Not that I recall.</p> <p>21 Q K-032.</p> <p>22 MR. O'DRISCOLL: I will give the witness 0032</p> <p>23 through 0055.</p> <p>24 MR. LeBLANC: Okay.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 168</p> <p>1 contained in the claim file, and provided him with the</p> <p>2 claim file.</p> <p>3 Q Okay.</p> <p>4 MR. O'DRISCOLL: Was that a question? We</p> <p>5 didn't get that if it was.</p> <p>6 MR. LeBLANC: It wasn't.</p> <p>7 BY MR. LeBLANC:</p> <p>8 Q How long did your review of the claim file</p> <p>9 take?</p> <p>10 MR. O'DRISCOLL: During what period of time are</p> <p>11 you talking about?</p> <p>12 MR. LeBLANC: The period of time from the time</p> <p>13 he found the claim file on his desk to the time he</p> <p>14 stopped reviewing it.</p> <p>15 MR. O'DRISCOLL: Well, I believe Mr. Mensie</p> <p>16 testified that there was a file placed on his desk. At</p> <p>17 some point he realized this file might relate to the</p> <p>18 case. He began to review it. Is that the point in time</p> <p>19 that you're talking about, how long he reviewed the claim</p> <p>20 file then?</p> <p>21 MR. LeBLANC: How long from the time that he</p> <p>22 found it on his desk until he was done reviewing it and</p> <p>23 sent it to you basically, to his attorney.</p> <p>24 THE WITNESS: I do not know.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 167</p> <p>1 THE WITNESS: Okay. This was the transcript I</p> <p>2 read.</p> <p>3 BY MR. LeBLANC:</p> <p>4 Q Mr. Mensie, have you seen this document before?</p> <p>5 A Yes.</p> <p>6 Q And do you recall where you saw this document?</p> <p>7 A Within the claim file.</p> <p>8 Q Did you review the document when you first saw</p> <p>9 it in the claim file?</p> <p>10 A I did review it having — that it had relevance</p> <p>11 to this — to the structured settlement, yes.</p> <p>12 Q And when you reviewed the claim files, what</p> <p>13 criteria did you use? What criteria were you looking for</p> <p>14 in terms of relevant documents?</p> <p>15 A Well, I was looking for any documents that</p> <p>16 could shed any light on my understanding of what took</p> <p>17 place back in 1983.</p> <p>18 Q When you found a document, the first document</p> <p>19 in the claim file you found that shed some light, did you</p> <p>20 then decide to send it to your attorney?</p> <p>21 A When I found that the contract was in the claim</p> <p>22 file, it was all part of the same process, yes. I</p> <p>23 told — alerted my attorney that I had located documents</p> <p>24 relative to the structured settlement, that they were</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 169</p> <p>1 BY MR. LeBLANC:</p> <p>2 Q Was it a day, two days, two weeks, how long?</p> <p>3 A Again, I don't recall specifically what time I</p> <p>4 allocated to reviewing the file. I took — I received</p> <p>5 the file, looked at it. It had documents relative to</p> <p>6 this, alerted counsel and had the matter — provided him</p> <p>7 with the file.</p> <p>8 Q Well, you testified prior that you found the</p> <p>9 claim file about a month ago. Is that true?</p> <p>10 A True.</p> <p>11 Q Okay. And your attorney contacted us about a</p> <p>12 week and a half, two weeks ago at this point on August</p> <p>13 25th to tell us that the claim file was discovered. So</p> <p>14 did you have the claim file for two weeks, for three</p> <p>15 weeks before you contacted your attorney?</p> <p>16 A I had it for the period of time between the</p> <p>17 time I received it and the time I transmitted it.</p> <p>18 Q How long was that?</p> <p>19 A I don't know specifically, but whatever that</p> <p>20 time frame was when it was transmitted last week, then</p> <p>21 that's three weeks.</p> <p>22 Q If you know, how long was anyone else at Kemper</p> <p>23 aware of the claim file before you received it?</p> <p>24 A I don't know.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 170</p> <p>1 Q And you testified earlier that you tried to</p> <p>2 backtrack to find out where the file came from, right?</p> <p>3 A Right.</p> <p>4 Q What efforts did you take to try to find where</p> <p>5 the file came from?</p> <p>6 A Talked to the clerical supervisor.</p> <p>7 Q Skaya?</p> <p>8 A Yes.</p> <p>9 Q And after you spoke with Ms. Skaya, did you</p> <p>10 have a better understanding of where the file came from?</p> <p>11 A Not yet. Didn't know that that was really</p> <p>12 important. I was actually surprised that we were able to</p> <p>13 locate it considering that it was as old as it was.</p> <p>14 Q Mr. Mensie, when did you first become aware</p> <p>15 that you were going to be a deponent in this case?</p> <p>16 A Several months ago.</p> <p>17 Q When did you -- when you -- strike that. I'm</p> <p>18 sorry.</p> <p>19 So you learned several months ago you were</p> <p>20 going to be deposed.</p> <p>21 A Yes.</p> <p>22 Q Did you understand that your deposition was</p> <p>23 supposed to be taken on August 29th?</p> <p>24 A Yes.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 172</p> <p>1 review of it.</p> <p>2 Q Well, in any event, it was several weeks before</p> <p>3 you and/or your attorneys contacted the other parties</p> <p>4 regarding the deposition being postponed because of this</p> <p>5 disclosure; is that right?</p> <p>6 MR. O'DRISCOLL: Object to form.</p> <p>7 THE WITNESS: That would be my understanding.</p> <p>8 MR. O'DRISCOLL: Several weeks from when?</p> <p>9 MR. LeBLANC: The witness answered the</p> <p>10 question.</p> <p>11 BY MR. LeBLANC:</p> <p>12 Q Referring back to K-0032 and K-0055, was this a</p> <p>13 document that you read in your review of the claim file?</p> <p>14 MR. O'DRISCOLL: This is -- I'm sorry. Could</p> <p>15 you say that again, the numbers, Peter.</p> <p>16 MR. LeBLANC: It's the transcript, it's K --</p> <p>17 MR. O'DRISCOLL: Oh, right.</p> <p>18 MR. LeBLANC: -- 0032 through K-0055.</p> <p>19 MR. O'DRISCOLL: Can you repeat the question.</p> <p>20 MR. LeBLANC: Court Reporter, can you read that</p> <p>21 back, please.</p> <p>22 (Record read as follows: Referring</p> <p>23 back to K-0032 and K-0055, was this a</p> <p>24 document that you read in your review</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 171</p> <p>1 Q How long before August 29 did the claim file</p> <p>2 surface?</p> <p>3 A Maybe a matter of a few weeks I suspect.</p> <p>4 Q Okay.</p> <p>5 A I really don't know.</p> <p>6 Q And did you immediately alert your counsel that</p> <p>7 you found the claim file, or did you sit on it for a</p> <p>8 while?</p> <p>9 MR. O'DRISCOLL: Object to the form.</p> <p>10 THE WITNESS: I wouldn't classify it as having</p> <p>11 been sat on. I've never physically sat on a file; but in</p> <p>12 conjunction with my normal course of business for that</p> <p>13 day, that file was in fact on my desk. I didn't expect</p> <p>14 to find any documents actually related to this matter in</p> <p>15 the claim file; but when I did discover them, I did</p> <p>16 communicate it.</p> <p>17 BY MR. LeBLANC:</p> <p>18 Q How long between the time the claim file was</p> <p>19 brought to your desk and the time you found that the</p> <p>20 documents related to this case, how long was that period</p> <p>21 of time?</p> <p>22 A It kind of all operates within that same time</p> <p>23 frame. I don't know specifically when it arrived and</p> <p>24 don't recall specifically when I actually initiated a</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 173</p> <p>1 of the claim file?)</p> <p>2 THE WITNESS: Yes.</p> <p>3 BY MR. LeBLANC:</p> <p>4 Q And in your reading of the document, did the</p> <p>5 name Charter Security come up at all?</p> <p>6 A I do not recall if the documents contain the</p> <p>7 name of Charter Security.</p> <p>8 MR. O'DRISCOLL: Question, Peter?</p> <p>9 MR. LeBLANC: Yes.</p> <p>10 BY MR. LeBLANC:</p> <p>11 Q If you'd refer to K-0032, do you know who</p> <p>12 Mr. Wells represented?</p> <p>13 MR. O'DRISCOLL: He's referring to this page</p> <p>14 here.</p> <p>15 MR. LeBLANC: First page of the transcript.</p> <p>16 MR. O'DRISCOLL: He's referring to the</p> <p>17 appearances at the bottom.</p> <p>18 THE WITNESS: It says for the defendant being</p> <p>19 Jenny C.</p> <p>20 BY MR. LeBLANC:</p> <p>21 Q How about W. Slater Allen?</p> <p>22 A Mr. Allen is on -- it doesn't state who he</p> <p>23 is representing in the sheet that you're referring to.</p> <p>24 MR. LeBLANC: Mr. O'Driscoll, would you</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 174</p> <p>1 stipulate Mr. Allen represented Kemper in the Jenny C 2 matter?</p> <p>3 MR. O'DRISCOLL: Well, no, I'm not prepared to 4 make a stipulation at this time.</p> <p>5 BY MR. LeBLANC:</p> <p>6 Q I'm going to refer the witness to K-0059 7 through K-0060?</p> <p>8 MR. O'DRISCOLL: The witness has them.</p> <p>9 BY MR. LeBLANC:</p> <p>10 Q Do you recognize those documents or that 11 document as a letter dated May 3rd, 1983?</p> <p>12 A Yes.</p> <p>13 Q Addressed to Mr. Jesus LaTorre?</p> <p>14 A Yes.</p> <p>15 Q In care of Kemper Group?</p> <p>16 A Yes.</p> <p>17 Q Did you see that the letter is on Booth and 18 Brodsky letterhead?</p> <p>19 A Yes.</p> <p>20 Q Do you see under that the reference W. Slater 21 Allen, Jr.?</p> <p>22 A Yes.</p> <p>23 Q If you go to the next page, the last line: I 24 enclose my final bill in this matter including the cost PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 176</p> <p>1 says is that Mr. Allen's company, the American 2 Motorists/Kemper had a limited liability of \$400,000. 3 Was that Mr. Allen's company? Was American Motorists 4 Mr. Allen's company? I don't quite understand what he's 5 saying there.</p> <p>6 Q Are you adamant that you're not going to 7 stipulate that Mr. Allen was Kemper's attorney in the 8 Jenny C matter?</p> <p>9 MR. O'DRISCOLL: Is that question directed to 10 me.</p> <p>11 MR. LeBLANC: I was asking if you are still 12 unwilling to stipulate that Mr. Allen represented --</p> <p>13 MR. O'DRISCOLL: No, I'm not prepared to 14 stipulate on the record now during Mr. Mensie's 15 deposition really to anything probably except for the 16 usual stipulations.</p> <p>17 MR. LeBLANC: That's fair enough. Why don't we 18 go off record for five minutes while I review the 19 documents.</p> <p>20 MR. O'DRISCOLL: Another five-minute break?</p> <p>21 MR. LeBLANC: At least.</p> <p>22 MR. O'DRISCOLL: Well, let's make it a 23 five-minute break then.</p> <p>24 (Whereupon a short recess was had, PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 175</p> <p>1 of the transcript.</p> <p>2 A Yes.</p> <p>3 Q Okay. Do you draw any conclusion that 4 Mr. Allen represented Kemper in the Jenny C matter?</p> <p>5 A Not from what you have outlined.</p> <p>6 Q Do you think that an attorney for another party 7 would submit a bill to Kemper for litigation?</p> <p>8 A Well, sure, parties that are employed to 9 represent the defendant would submit bills to Kemper.</p> <p>10 Q Refer to K-0041.</p> <p>11 MR. O'DRISCOLL: K-0041. I will give the 12 witness K-0032 through K-0055.</p> <p>13 THE WITNESS: Okay.</p> <p>14 BY MR. LeBLANC:</p> <p>15 Q Do you see in the middle paragraph there where 16 it says Mr. Allen?</p> <p>17 A Yes.</p> <p>18 Q And Mr. Allen's company, the American 19 Motorists/Kemper had a limited liability of \$400,000?</p> <p>20 A I do.</p> <p>21 Q Do you see -- does that cause you to believe 22 that Mr. Allen represented American Motorists/Kemper in 23 that action?</p> <p>24 A Well, I can only read what it says, and what it PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 177</p> <p>1 after which the preceding deposition 2 continued as follows:)</p> <p>3 BY MR. LeBLANC:</p> <p>4 Q Mr. Mensie, who was Kemper Insurance Company's 5 representative in the Jenny C matter?</p> <p>6 MR. O'DRISCOLL: Object to the form.</p> <p>7 THE WITNESS: Kemper Insurance representative, 8 we've talked about that earlier, was according to the 9 file Jesus -- I've forgotten his last name, forgive me, 10 but the claim rep was Jesus.</p> <p>11 BY MR. LeBLANC:</p> <p>12 Q Who was the attorney?</p> <p>13 MR. O'DRISCOLL: Who was what attorney?</p> <p>14 MR. LeBLANC: The attorney for Kemper in the 15 Jenny C matter.</p> <p>16 THE WITNESS: In the underlying litigation?</p> <p>17 BY MR. LeBLANC:</p> <p>18 Q In the Jenny C matter.</p> <p>19 MR. O'DRISCOLL: Are you distinguishing that 20 from the underlying litigation?</p> <p>21 MR. LeBLANC: I'm asking him the Jenny C 22 matter. I mean we've been talking about it for hours 23 now. If the witness doesn't understand what the Jenny C 24 matter is, we have a serious problem.</p> <p>PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 178</p> <p>1 THE WITNESS: Let me interject something</p> <p>2 because my understanding is that the Jenny C matter that</p> <p>3 you have been referring to is the underlying litigation.</p> <p>4 I wanted to make sure that that's clear, but by nature of</p> <p>5 your question asking who Kemper's representative was in</p> <p>6 the Jenny C matter, I'm not so certain.</p> <p>7 To the best of my knowledge Kemper was not</p> <p>8 a party to the Jenny C matter for which they have not</p> <p>9 needed to have an attorney. So Kemper did not have an</p> <p>10 attorney in, as you call it, the Jenny C matter.</p> <p>11 BY MR. LeBLANC:</p> <p>12 Q Is that Kemper's official position, they had no</p> <p>13 representation, no attorney, in the Jenny C matter?</p> <p>14 A Unless Kemper was a party in the Jenny C</p> <p>15 matter, Kemper would not have had an attorney in the</p> <p>16 Jenny C matter. The attorneys -- it's my -- from what</p> <p>17 I've read here.</p> <p>18 Q Refer to document K-0114.</p> <p>19 MR. O'DRISCOLL: Yes, K-0114. Mr. Mensie has</p> <p>20 the document.</p> <p>21 BY MR. LeBLANC:</p> <p>22 Q Can you read the first line of that document</p> <p>23 for me, please.</p> <p>24 A It says: On behalf of Jenny C, I want to write</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 180</p> <p>1 retrospectively. I would suspect that he would have.</p> <p>2 Q Thank you.</p> <p>3 A That doesn't mean his understanding was correct</p> <p>4 either.</p> <p>5 Q Doesn't mean that yours is.</p> <p>6 A That's correct.</p> <p>7 Q Now, let's go back to K-0032.</p> <p>8 MR. O'DRISCOLL: Mr. Mensie has now K-0032</p> <p>9 through 55.</p> <p>10 BY MR. LeBLANC:</p> <p>11 Q Under the appearance section you see there are</p> <p>12 four individuals listed by name?</p> <p>13 A Correct.</p> <p>14 Q Your review of the claim file, both the portion</p> <p>15 that was disclosed and the portion that was withheld, is</p> <p>16 there any indication in any of those documents that any</p> <p>17 of these people represented Charter Security Life</p> <p>18 Insurance Company?</p> <p>19 A The people that are listed on this document</p> <p>20 that were -- that appeared, there's no -- I don't have</p> <p>21 any recollection of any of these people making</p> <p>22 representations that they represented Charter.</p> <p>23 Q Thank you.</p> <p>24 MR. O'DRISCOLL: Peter, is there a question?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 179</p> <p>1 you formally as an attorney for American Motorists, the</p> <p>2 Kemper Group, to register my distress of the current</p> <p>3 status of the case and the failure of your company to</p> <p>4 make reasonable efforts to settle the matter within the</p> <p>5 policy limits.</p> <p>6 Q And who is that letter addressed to?</p> <p>7 A It's addressed to W. Slater Allen, Jr.</p> <p>8 Q Okay. W. Slater Allen, Jr., the attorney for</p> <p>9 the Kemper Company, Kemper Group?</p> <p>10 A That's Mr. Spunt's interpretation.</p> <p>11 Q And who is Mr. Spunt?</p> <p>12 A He says that he is -- he's writing on behalf of</p> <p>13 Jenny C.</p> <p>14 Q And wouldn't Mr. Spunt know better than you</p> <p>15 since he was involved in the case in 1983?</p> <p>16 MR. O'DRISCOLL: Object to the form.</p> <p>17 THE WITNESS: I suspect that him being closer</p> <p>18 to the situation he would, but you are not asking Mr.</p> <p>19 Spunt the case. You are asking me.</p> <p>20 BY MR. LeBLANC:</p> <p>21 Q I'm asking you: Wouldn't he have a better</p> <p>22 understanding than you do now 23 years later?</p> <p>23 A I'm glad you stipulated that it has been that</p> <p>24 long ago, and I am looking at this matter</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 181</p> <p>1 MR. LeBLANC: Do you have a question, Tim?</p> <p>2 MR. O'DRISCOLL: Yes, my question is: Do you</p> <p>3 have a question?</p> <p>4 MR. LeBLANC: My answer is yes, I do have a</p> <p>5 question.</p> <p>6 BY MR. LeBLANC:</p> <p>7 Q Mr. Mensie, can you tell me what the procedure</p> <p>8 would be for Kemper to finalize the purchase of the</p> <p>9 annuity in the Jenny C versus -- or Dimon versus Jenny C</p> <p>10 case?</p> <p>11 A From a claim standpoint the final -- finalizing</p> <p>12 the purchase of the annuity is generally when you issue</p> <p>13 the check.</p> <p>14 Q Okay. And to whom would the check be issued?</p> <p>15 MR. O'DRISCOLL: To whom was it issued in this</p> <p>16 case?</p> <p>17 MR. LeBLANC: No. In terms of the policy in</p> <p>18 the procedures Kemper uses, does Kemper issue the check</p> <p>19 to the company that issues the annuity or to opposing</p> <p>20 counsel directly?</p> <p>21 THE WITNESS: It would depend. If you're -- if</p> <p>22 Kemper were brokering the deal through one of its</p> <p>23 brokers, they would issue the check in that manner. If</p> <p>24 the plaintiff's attorney, as happened here, was involved</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 182</p> <p>1 in brokering the deal, the check was issued to the</p> <p>2 plaintiff's attorney.</p> <p>3 BY MR. LeBLANC:</p> <p>4 Q And made payable to who?</p> <p>5 A It's made payable to the life company.</p> <p>6 Q I'd like you to look at K-0123.</p> <p>7 A Yes.</p> <p>8 Q And can you tell me who that check is made</p> <p>9 payable to?</p> <p>10 A Charter Security Life Insurance Company.</p> <p>11 Q And the reference in the portion directly below</p> <p>12 the amount where it says: By hand-J. Noe?</p> <p>13 A Yes.</p> <p>14 Q What does that mean?</p> <p>15 A The check was generated by computer and would</p> <p>16 have gone out by computer but for a code that I suspect,</p> <p>17 as it is today, you enter -- which moves the check to a</p> <p>18 different batching whereby the person -- it can be</p> <p>19 delivered by hand. It's just not automatically mailed.</p> <p>20 Q Okay. So what would have happened to this</p> <p>21 check once it was processed by the computer?</p> <p>22 A It was for delivery to J. Noe.</p> <p>23 Q And do you know what Mr. Noe did with the</p> <p>24 check?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 184</p> <p>1 A Boy, I do not know.</p> <p>2 Q K-0124, claim check number, you don't know</p> <p>3 whether it's just a randomly generated number or --</p> <p>4 A It appears to be in sequence; but it could, you</p> <p>5 know, in '83, I don't know how they actually issued them.</p> <p>6 I'm not even sure today. There could be a security issue</p> <p>7 there, but this appears to have been in sequence.</p> <p>8 Q And in this case the check directly to Dennis</p> <p>9 Dimon and his attorneys issued first, and then a check to</p> <p>10 Charter Security Life Insurance Company issued second?</p> <p>11 A That appears to be how they were -- how they</p> <p>12 came out, yes.</p> <p>13 Q Okay. And on the check to Mr. Dimon and Latti</p> <p>14 Associates under the final payment box, both yes and no</p> <p>15 are checked. What does that indicate to you?</p> <p>16 A I'm not sure what it means if both boxes are</p> <p>17 checked.</p> <p>18 Q Do you know if those boxes would have been</p> <p>19 checked as a result of the computer program?</p> <p>20 A I have no idea.</p> <p>21 Q Do you know if someone would have gone in there</p> <p>22 and typed that information if the rest of the check was</p> <p>23 generated by computer?</p> <p>24 A I wouldn't think so. This is computer</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 183</p> <p>1 A There's other documents in the file that Mr.</p> <p>2 Noe delivered the check to Mr. Allen I think, if the</p> <p>3 record's correct, for delivery to the plaintiff's</p> <p>4 attorney.</p> <p>5 Q If you'd look under the section towards the top</p> <p>6 of the check that says final payment, yes/no.</p> <p>7 A Yes.</p> <p>8 Q What does that refer to?</p> <p>9 A That there may have been other payments that</p> <p>10 would have been required on the file.</p> <p>11 Q And what types of other payments would be made</p> <p>12 on a file like this?</p> <p>13 A You've got -- there was another component of</p> <p>14 this settlement agreement that was up front cash, so</p> <p>15 depending on the sequence I suspect or the contemplation.</p> <p>16 You know, there's expense payments to be made.</p> <p>17 Q Is that your answer, sir?</p> <p>18 A Yes.</p> <p>19 Q Okay. I didn't know if you were just pausing.</p> <p>20 If you'd look at K-0124?</p> <p>21 MR. O'DRISCOLL: Mr. Mensie has the document.</p> <p>22 BY MR. LeBLANC:</p> <p>23 Q Okay. And are checks issued by Kemper in</p> <p>24 number sequence order?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 185</p> <p>1 generated so it would have been the person who -- and</p> <p>2 it's done by code now, so I suspect it was done by code</p> <p>3 there as well.</p> <p>4 MS. McQUAY: If I may interject at this point,</p> <p>5 Peter, I have some questions to ask of this witness. I</p> <p>6 suspect that the other people on the line do as well, and</p> <p>7 I'm becoming concerned. I see it's now 4:15 so 5:00</p> <p>8 o'clock is drawing very near. How close are you to</p> <p>9 finishing?</p> <p>10 MR. LeBLANC: That's a good question. It</p> <p>11 appears that Mr. O'Driscoll is expecting me to go through</p> <p>12 the entire 128 pages that were disclosed yesterday before</p> <p>13 the end of today, so I'll do my best to make that happen;</p> <p>14 and then we'll have to come back another day to finish</p> <p>15 the deposition.</p> <p>16 MR. O'DRISCOLL: Well, I'll say a few things.</p> <p>17 First of all, the documents were given to you two days</p> <p>18 ago. Second of all, as far as coming back for another</p> <p>19 day, you know, I'll have to check with Mr. Mensie on</p> <p>20 that.</p> <p>21 THE WITNESS: Can we go off the record for a</p> <p>22 second?</p> <p>23 MR. O'DRISCOLL: Off.</p> <p>24 MR. LeBLANC: Actually I don't know why we need</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p>1 to go off the record.</p> <p>2 THE WITNESS: I need to speak to my attorney.</p> <p>3 MR. LeBLANC: I just point out that the notice</p> <p>4 says the oral examination will continue from day to day</p> <p>5 until completed.</p> <p>6 MR. O'DRISCOLL: We're going to talk. We're</p> <p>7 going off the record.</p> <p>8 (Discussion held off the record.)</p> <p>9 MR. O'DRISCOLL: I've spoken with Mr. Mensie,</p> <p>10 and his timing issues and other conflicts he has in his</p> <p>11 schedule are consistent with what the concerns that Sue</p> <p>12 has expressed. So we can go for a little bit more today;</p> <p>13 but you know, to the extent that there are other</p> <p>14 questions, we're just going to have to reschedule a time</p> <p>15 to continue it.</p> <p>16 MS. McQUAY: just so that we can get a time</p> <p>17 frame on that, and I know that it may be subject to some</p> <p>18 change, but how soon do you anticipate we might be able</p> <p>19 to do that, Tim?</p> <p>20 MR. O'DRISCOLL: That I don't know. That we</p> <p>21 didn't discuss.</p> <p>22 MS. McQUAY: Just so we're clear that we will</p> <p>23 be resuming. I just was becoming concerned that we might</p> <p>24 take a position we were limited to one day, and I didn't</p> <p>PRECISE REPORTING SERVICE, P.C.</p>	<p>1 have someone bring me my calendar. So I'm going to do</p> <p>2 that now, and I'll be back in less than a minute.</p> <p>3 MR. O'DRISCOLL: I'm out here in Illinois. If</p> <p>4 it's okay with your schedule, folks, I would suggest that</p> <p>5 we resume this at 9:00 a.m. tomorrow.</p> <p>6 MR. DeWICK: This is Jed. That works for me.</p> <p>7 MS. McQUAY: Well, it doesn't work for me if</p> <p>8 9:00 o'clock means Boston time.</p> <p>9 MR. O'DRISCOLL: Forgive me. 10:00 a.m. Boston</p> <p>10 time.</p> <p>11 MS. McQUAY: 10:00 would be all right.</p> <p>12 MR. KEANE: I'm in depositions tomorrow.</p> <p>13 MR. LeBLANC: And tomorrow doesn't work for me</p> <p>14 either.</p> <p>15 MR. O'DRISCOLL: Any chance that you gentlemen</p> <p>16 could have someone else at your firms take over those</p> <p>17 depositions tomorrow or postpone those depositions?</p> <p>18 MR. KEANE: This is Brian Keane. I can</p> <p>19 certainly see what I can do. Unfortunately these have</p> <p>20 been moved several times, but I can certainly see what I</p> <p>21 can do.</p> <p>22 MR. O'DRISCOLL: Is that --</p> <p>23 MR. KEANE: On my end I had other things I was</p> <p>24 going to take care of tomorrow.</p> <p>PRECISE REPORTING SERVICE, P.C.</p>
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<p>1 want to be left out in the cold here.</p> <p>2 MR. O'DRISCOLL: No.</p> <p>3 MS. McQUAY: I understand that's not your</p> <p>4 position.</p> <p>5 MR. O'DRISCOLL: No, that's not my position.</p> <p>6 You know, we can be somewhat flexible on that, and I</p> <p>7 understand there are multiple parties. So let me suggest</p> <p>8 that we go for a bit more today, and let's see what we</p> <p>9 can finish up here.</p> <p>10 MS. McQUAY: Okay.</p> <p>11 MR. LeBLANC: Is there any chance that everyone</p> <p>12 has their calendar so we can pick another day before we</p> <p>13 get off record today or before we conclude today?</p> <p>14 MR. DeWICK: This is Jed. That's what I would</p> <p>15 prefer to do if everyone has the ability to do that.</p> <p>16 MS. McQUAY: Yes. I'd like to do that. I'd</p> <p>17 also actually like to suggest at least if we're going to</p> <p>18 be resuming another day if maybe we could wrap this day</p> <p>19 up around 4:30 because we've all been sitting here on the</p> <p>20 phone all day long with other things piling up to do.</p> <p>21 MR. O'DRISCOLL: 15 minutes from now?</p> <p>22 MS. McQUAY: Yes.</p> <p>23 MR. O'DRISCOLL: Yes, that's fine.</p> <p>24 MR. LeBLANC: I would just need one minute to</p> <p>PRECISE REPORTING SERVICE, P.C.</p>	<p>1 MR. O'DRISCOLL: I think we all did.</p> <p>2 MR. KEANE: If everyone else can meet tomorrow,</p> <p>3 I wouldn't be opposed to meeting then, like a 10:00</p> <p>4 start.</p> <p>5 MR. O'DRISCOLL: Okay. Well, Brian, can I</p> <p>6 suggest this then in light of that, and this is just a</p> <p>7 suggestion, but I would suggest that if you could make</p> <p>8 those calls that you suggested and then we could --</p> <p>9 because we want to wrap all this up one way or the other</p> <p>10 before we leave today. So if you can in fact make a call</p> <p>11 or two and see if we can't do that, that would make a lot</p> <p>12 of sense.</p> <p>13 MR. KEANE: I will do that.</p> <p>14 MR. O'DRISCOLL: Okay.</p> <p>15 MR. KEANE: Do you want me to do that right</p> <p>16 now? I think the earlier the better on that.</p> <p>17 MR. O'DRISCOLL: I think so.</p> <p>18 MR. KEANE: Do you want to stay on the line?</p> <p>19 MR. O'DRISCOLL: We'll stay on the line and</p> <p>20 just take another two-minute break or whatever it takes</p> <p>21 you.</p> <p>22 MR. KEANE: Let me make a call. Hold on.</p> <p>23 MR. DeWICK: And for what it's worth, I know</p> <p>24 you guys accommodated me earlier, and I appreciate that.</p> <p>PRECISE REPORTING SERVICE, P.C.</p>

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<p>1 If we are going to start at 10:00 a.m. tomorrow, let me 2 just request that we end now because I have a 4:00 that 3 I'm currently late for obviously. 4 MR. O'DRISCOLL: That would definitely be the 5 case. We're going to be ending in a few minutes no 6 matter what. 7 MR. KEANE: Let me make a call. 8 (Discussion held off the record.) 9 MR. KEANE: I set it up with a colleague to 10 take those tomorrow so I am free. 11 MR. O'DRISCOLL: Good. Thank you for your 12 courtesies. If it's all the same to you, then we 13 probably should break now. I'm sorry. I haven't even 14 asked you, Joanne. 15 (Discussion held off the record.) 16 MR. O'DRISCOLL: Did you guys hear us just 17 talking now about the arrangements tomorrow? 18 MS. McQUAY: No. 19 MR. O'DRISCOLL: Okay. we're all set. 20 Joanne's going to be here. So we'll reconvene tomorrow 21 morning at 10:00 a.m. Same arrangements. 22 MS. McQUAY: Same phone number? 23 MR. O'DRISCOLL: 10:00 a.m. East Coast time, 24 and Peter will finish up, and we'll go with Sue and get PRECISE REPORTING SERVICE, P.C.</p>	<p>1 2 IN THE UNITED STATES DISTRICT COURT 3 FOR THE NORTHERN DISTRICT OF ILLINOIS 4 EASTERN DIVISION 5 DENNIS DIMON,) 6 Plaintiffs,) 7 vs.) C.A. No: 05-11073 WGY 8) 9 METROPOLITAN LIFE INSURANCE,) 10 KEMPER INSURANCE COMPANY,) 11 MORGAN STANLEY DW, INC.,) 12 MICHAEL B. LATTI, LATTI) 13 ASSOCIATES, and LATTI &) 14 ANDERSON LLP,) 15 Defendants.) 16 17 The continued telephonic deposition of 18 WILLIAM R. MENSIE, called by the Defendant Metropolitan 19 Life Insurance for examination, pursuant to Notice, and 20 pursuant to the Rules of Civil Procedure for the United 21 States District Courts pertaining to the taking of 22 depositions, taken before Joanne M. Brogan, a Certified 23 Shorthand Reporter and a Notary Public in and for the 24 County of Cook and State of Illinois, at One Kemper Drive, Long Grove, Illinois, on Friday, the 8th day of September, 2006, at the hour of 9:00 o'clock a.m.</p>
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<p>1 this done. 2 3 (Whereupon the preceding deposition 4 was adjourned until 9:00 o'clock 5 a.m., Friday, September 8, 2006.) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 PRECISE REPORTING SERVICE, P.C.</p>	<p>1 APPEARANCES: 2 3 THE KAPLAN/BOND GROUP 4 By MR. BRIAN KEANE (present telephonically) 5 88 Black Falcon Avenue, Suite 301 6 Boston, Massachusetts 02210 7 (617)261-0080 8 appeared on behalf of the Plaintiff; 9 10 CIAPCIAK & ASSOCIATES, P.C. 11 By MR. PETER M. LeBLANC (present telephonically) 12 99 Access Road 13 Norwood, Massachusetts 02062 14 (781)255-7401 15 appeared on behalf of Defendant 16 Metropolitan Life Insurance Company; 17 18 SULLIVAN WEINSTEIN & McQUAY, P.C. 19 By MS. SANDRA SUE McQUAY (present telephonically) 20 Two Park Plaza 21 Boston, Massachusetts 02116-3902 22 (617)348-4355 23 appeared on behalf of Defendant 24 Morgan Stanley DW, Inc.; TODD & WELD, LLP By MR. JOHN E. DeWICK (present telephonically) 28 State Street Boston, Massachusetts 02109 (617)624-4803 appeared on behalf of Defendants Michael B. Latti, Latti Associates and Latti & Anderson LLP; DRINKER BIDDLE & REATH, LLP By MR. TIMOTHY J. O'DRISCOLL One Logan Square, 18th and Cherry Streets Philadelphia, Pennsylvania 19103-6969 (215)988-2865 appeared on behalf of Defendant Kemper Insurance Company. PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 194</p> <p>1 WILLIAM R. MENSIE, 2 recalled as a witness on behalf of the Defendant 3 Metropolitan Life Insurance, having been previously duly 4 sworn, was examined and testified further as follows: 5 DIRECT EXAMINATION (Continued) 6 BY MR. LeBLANC: 7 Q Good morning, Mr. Mensie. We're back on record 8 in your deposition, and you're still under oath. Do you 9 understand that? 10 A Yes. 11 Q Okay. Since you testified -- last testified 12 yesterday did you review any additional documents since 13 then? 14 A No. 15 Q Did you talk to anyone at Kemper other than 16 your attorney about the case since then? 17 A No. 18 Q Okay. Is there any reason why any of your 19 answers from yesterday would have to be changed today? 20 MR. O'DRISCOLL: Mr. Mensie obviously doesn't 21 have the transcript in front of him, so I'll object to 22 the form of that question. I don't know frankly if 23 that's a fair question to ask him after six hours of 24 testimony yesterday to ask him to go over. He's going to PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 196</p> <p>1 Q Now, I'd ask you to look at a letter dated 2 August 12, 1983, in the packet of documents I sent to 3 Mr. O'Driscoll on August 24, 2006, a letter from Robert 4 Foley to John Noe? 5 MR. O'DRISCOLL: Yes, I'll get that now for 6 Mr. Mensie. 7 I have the letter August 12. Mr. Mensie 8 has it in front of him now. If we could just give him an 9 opportunity to review it. 10 MR. LeBLANC: Absolutely. 11 THE WITNESS: Okay. 12 MR. LeBLANC: Can you mark that as -- are we on 13 7 or 8? 14 THE REPORTER: We're on 7. 15 MR. LeBLANC: Exhibit 7, please. 16 (Exhibit No. 7 was marked for 17 identification.) 18 BY MR. LeBLANC: 19 Q Mr. Mensie, did you have a chance to review 20 this letter? 21 A Yes. 22 Q And in this letter does it appear that Mr. Noe 23 is relaying to Mr. Foley what he understands about the 24 annuity? PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 195</p> <p>1 review the transcript obviously when we get it back, and 2 he'll be able to review and sign at that time. 3 MR. LeBLANC: Understood. I'm just asking if 4 anything -- if he knows of anything that he wants to 5 change with his testimony yesterday. I'm not asking him 6 to reaffirm everything he said. 7 MR. O'DRISCOLL: Okay. And I'm just saying I 8 want to make it clear he wouldn't be waiving his right to 9 change something later if he didn't mention it right now 10 in response to your question. 11 MR. LeBLANC: Okay. Fair enough. 12 BY MR. LeBLANC: 13 Q Mr. Mensie? 14 A Yes. 15 Q Do you recall anything that you testified 16 yesterday that you want to change today? 17 A Not at this time. 18 Q Okay. Can you tell me what part Kemper played 19 in negotiating the annuity with Charter Security? 20 A From my review of the record, none. 21 Q None, okay. So prior to the annuity being 22 issued, no one at Kemper had any contact with anyone at 23 Charter Security regarding this annuity? 24 A Not from any of the documents that I have read. PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 197</p> <p>1 A Yes. 2 Q And do you understand that August 12, 1983 is a 3 date after which the annuity was issued? 4 A Yes. 5 Q Does it appear from this letter that Mr. Noe or 6 Mr. Noe and Mr. Foley had any other communications prior 7 to the date of this letter? 8 A The letter states that Mr. Noe received the 9 replacement policy issued by Charter Security, so that 10 would suggest that sometime prior to August 12th a 11 replacement policy was received by Mr. Noe. 12 Q Does it indicate that Mr. Noe and Mr. Foley had 13 any communications? 14 A I don't see that it does. 15 Q Okay. And do you see where it says: "I am 16 advised by Mr. Hughes of Latti Associates"? 17 A Yes. 18 Q "That your quotation was," and it continues? 19 A Okay. Yes. 20 Q Does that indicate to you that Mr. Noe had any 21 communication with Mr. Foley directly regarding what the 22 quotation was? 23 A I don't draw that conclusion. 24 Q Okay. Turn to what we marked as Exhibit 1. PRECISE REPORTING SERVICE, P.C.</p>

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<p>1 MR. O'DRISCOLL: Exhibit 1?</p> <p>2 MR. LeBLANC: Yes, please.</p> <p>3 MR. O'DRISCOLL: Mr. Mensie has that in front</p> <p>4 of him.</p> <p>5 THE WITNESS: Okay.</p> <p>6 BY MR. LeBLANC:</p> <p>7 Q Do you see in that letter where it says: "Your</p> <p>8 agent, Mr. Foley, further confirmed this to me by</p> <p>9 telephone in April 1983?"</p> <p>10 A Yes.</p> <p>11 Q Would you agree with me that August 12, 1983 is</p> <p>12 prior to October 10th, 1983?</p> <p>13 A Yes.</p> <p>14 Q And does it strike you as inconsistent that in</p> <p>15 August Mr. Noe writes to Mr. Foley that he was advised by</p> <p>16 Mr. Hughes what the quotation was, then writes a letter</p> <p>17 to Charter Security that he confirmed this with Mr. Foley</p> <p>18 in April. Is that inconsistent at all in your opinion?</p> <p>19 A No.</p> <p>20 Q Okay. Why not?</p> <p>21 A Well, in the August 12th letter he's just</p> <p>22 simply stating a fact. He doesn't suggest anything other</p> <p>23 than what the letter says.</p> <p>24 Q Do you think it's strange that he didn't</p> <p>PRECISE REPORTING SERVICE, P.C.</p>	<p>1 MR. O'DRISCOLL: I'm sorry. Did you say K-0114</p> <p>2 to K-0115?</p> <p>3 MR. LeBLANC: Yes, that's Exhibit 8. Now</p> <p>4 moving on to a separate letter.</p> <p>5 MR. O'DRISCOLL: Oh, all right. And you want</p> <p>6 Mr. Mensie to look at K-0116?</p> <p>7 MR. LeBLANC: Please.</p> <p>8 MR. O'DRISCOLL: Mr. Mensie has that. He'll</p> <p>9 just review it.</p> <p>10 THE WITNESS: Okay.</p> <p>11 BY MR. LeBLANC:</p> <p>12 Q Do you see where -- the last line of the</p> <p>13 letter: "...which you are acting as counsel for Kemper</p> <p>14 Insurance Company"?</p> <p>15 A Yes.</p> <p>16 Q And do you see it's directed to Mr. Allen?</p> <p>17 A Yes.</p> <p>18 Q Okay. Would you read that to mean that</p> <p>19 Mr. Allen was acting as Kemper's attorney?</p> <p>20 A I don't.</p> <p>21 Q I'm sorry?</p> <p>22 A I said I do not.</p> <p>23 Q You do not. Why not?</p> <p>24 A Well, from a claim perspective Kemper was not a</p> <p>PRECISE REPORTING SERVICE, P.C.</p>
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<p>1 mention to Mr. Foley that Mr. Foley actually confirmed</p> <p>2 what the terms of the settlement -- or the terms of the</p> <p>3 annuity were to be in his letter of August 12th directly</p> <p>4 to Mr. Foley?</p> <p>5 A No, I don't know what was in his mind at the</p> <p>6 time; but, no, it doesn't necessarily strike me strange</p> <p>7 that he would be communicating to Mr. Foley the facts</p> <p>8 that he does on August 12th.</p> <p>9 Q But in any event, you would agree that no</p> <p>10 representative of Kemper negotiated directly with Charter</p> <p>11 Security during the application and issuance process of</p> <p>12 the annuity?</p> <p>13 A I didn't see -- I don't recall having seen</p> <p>14 anything that suggested that.</p> <p>15 MR. LeBLANC: As a housekeeping matter, I'd</p> <p>16 like to have marked as Exhibit K-0114 through K-0115. Is</p> <p>17 that marked as Exhibit 8?</p> <p>18 MR. O'DRISCOLL: That will be Exhibit 8.</p> <p>19 Mr. Mensie now has that letter.</p> <p>20 (Exhibit No. 8 was marked for</p> <p>21 identification.)</p> <p>22 BY MR. LeBLANC:</p> <p>23 Q If you could turn to K-0116, the letter to W.</p> <p>24 Slater Allen.</p> <p>PRECISE REPORTING SERVICE, P.C.</p>	<p>1 party to the litigation, so Mr. Allen could not have been</p> <p>2 appointed to represent Kemper's interest from a claim</p> <p>3 perspective. I mean it was the insured's -- Kemper had</p> <p>4 an obligation to its insured. Bringing in Mr. Allen</p> <p>5 should have been for the purpose of protecting its</p> <p>6 obligation to its insured. So when I read the letter,</p> <p>7 even though Mr. Fisher interprets Mr. Allen as acting as</p> <p>8 counsel for Kemper, it's not clear to me that that was in</p> <p>9 fact the case.</p> <p>10 Q Would it never be the case that Kemper would</p> <p>11 have counsel when it held an excess liability policy even</p> <p>12 if it wasn't directly named as a party?</p> <p>13 A That's just a general question. You know, I</p> <p>14 don't know of an -- you know, I'd have to look at a</p> <p>15 specific set of circumstances.</p> <p>16 Q Okay. Is it your testimony here yesterday and</p> <p>17 today that Mr. Slater -- or Mr. Allen could not have been</p> <p>18 Kemper's counsel?</p> <p>19 A I think Mr. -- well, you know, when you speak</p> <p>20 of counsel, you know, certainly Mr. Allen provided</p> <p>21 counsel to; but acting as its counsel of record as this</p> <p>22 letter would suggest are in my mind two different things.</p> <p>23 Q The term "counsel of record" never came up in</p> <p>24 this letter, does it?</p> <p>PRECISE REPORTING SERVICE, P.C.</p>

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<p>1 A No, but it certainly -- I get the inference</p> <p>2 that when he identifies him as counsel, I get the</p> <p>3 inference and the inference from your question that</p> <p>4 you're saying that Mr. Allen in fact represented Kemper,</p> <p>5 and I think that was your question.</p> <p>6 Q And your testimony is that Mr. Allen at no time</p> <p>7 ever represented Kemper Insurance Company in this case,</p> <p>8 in the Jenny C versus -- Dimon versus Jenny C case?</p> <p>9 A I'm saying I have not seen anything that has</p> <p>10 made that clear to me. As I read the documents that you</p> <p>11 point out, that's not the conclusion I draw from those</p> <p>12 documents.</p> <p>13 Q But that was the conclusion that Mr. Fisher</p> <p>14 drew, would you agree with that?</p> <p>15 A Mr. -- that is the conclusion Mr. Fisher drew.</p> <p>16 Q And that's also the conclusion that Mr. Spunt</p> <p>17 drew on Exhibit 8?</p> <p>18 A That is again correct.</p> <p>19 Q So it seems that the people or some of the</p> <p>20 individuals who were dealing with or involved in the</p> <p>21 Jenny C case at the time treated Mr. Allen like he was</p> <p>22 counsel for Kemper?</p> <p>23 A That is correct, and that is not necessarily</p> <p>24 unusual.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p>1 BY MR. LeBLANC:</p> <p>2 Q Is it Kemper's position that he is not retained</p> <p>3 as an attorney for Kemper in the Jenny C matter, yes or</p> <p>4 no?</p> <p>5 MR. O'DRISCOLL: Objection, asked and answered.</p> <p>6 BY MR. LeBLANC:</p> <p>7 Q Mr. Mensie.</p> <p>8 MR. O'DRISCOLL: I mean if you have anything</p> <p>9 further to add, Mr. Mensie, you may but...</p> <p>10 THE WITNESS: I don't have anything further to</p> <p>11 add to my answer that I've given.</p> <p>12 BY MR. LeBLANC:</p> <p>13 Q Mr. Mensie, do you know -- I'm sorry.</p> <p>14 MR. LeBLANC: First let's make the March 10th,</p> <p>15 1983 letter to Mr. Allen from Mr. Fisher as Exhibit 9.</p> <p>16 Did we already do that?</p> <p>17 THE REPORTER: No.</p> <p>18 MR. LeBLANC: Okay. Let's do that now, please.</p> <p>19 (Exhibit No. 9 was marked for</p> <p>20 identification.)</p> <p>21 THE REPORTER: Okay. It's marked.</p> <p>22 BY MR. LeBLANC:</p> <p>23 Q Mr. Mensie, what did Kemper understand about</p> <p>24 Mr. Dimon's education or ability to comprehend the</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
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<p>1 Q Okay. So is it Kemper's position that</p> <p>2 Mr. Allen was not their attorney at the time in 1983?</p> <p>3 A As best I can answer that is the information I</p> <p>4 reviewed indicated that Kemper appointed Mr. Allen to be</p> <p>5 involved in this case.</p> <p>6 Q Okay. So you agree that Mr. Allen was retained</p> <p>7 by Kemper?</p> <p>8 A The information I've seen suggests that, yes.</p> <p>9 Q Okay.</p> <p>10 A But again Kemper's obligation was to its</p> <p>11 insured.</p> <p>12 Q Mr. Allen was not retained as an attorney for</p> <p>13 Kemper?</p> <p>14 MR. O'DRISCOLL: I'm sorry. Could you repeat</p> <p>15 that question, Peter. We couldn't make it out.</p> <p>16 BY MR. LeBLANC:</p> <p>17 Q Is it Kemper's position that Mr. Allen was not</p> <p>18 retained as an attorney for Kemper?</p> <p>19 MR. O'DRISCOLL: Objection, asked and answered.</p> <p>20 BY MR. LeBLANC:</p> <p>21 Q Mr. Mensie?</p> <p>22 MR. O'DRISCOLL: Mr. Mensie already answered</p> <p>23 that question in several different ways.</p> <p>24 MR. LeBLANC: Well, I want to hear.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p>1 settlement at the time of the settlement in 1983?</p> <p>2 MR. O'DRISCOLL: I don't think we got that</p> <p>3 whole question.</p> <p>4 MR. LeBLANC: Okay. I'll strike that and</p> <p>5 rephrase.</p> <p>6 BY MR. LeBLANC:</p> <p>7 Q Mr. Mensie, do you have an understanding of</p> <p>8 what Kemper understood regarding Mr. Dimon's capabilities</p> <p>9 or abilities to understand the settlement in 1983?</p> <p>10 A Within the documents I seem to recall that</p> <p>11 there were references regarding his ability to the extent</p> <p>12 that the court in fact appointed a guardian ad litem.</p> <p>13 Q Have you worked on a seamen's case before?</p> <p>14 A Yes.</p> <p>15 Q And do you understand that there may be</p> <p>16 challenges with regards to educational levels or</p> <p>17 cognitive abilities with seamen?</p> <p>18 A I don't recall any specific understanding of</p> <p>19 that requirement at this time.</p> <p>20 Q Can you turn to Exhibit 5.</p> <p>21 Actually don't worry about Exhibit 5.</p> <p>22 We're going to move on to something else. Can you turn</p> <p>23 to page 0069.</p> <p>24 MR. O'DRISCOLL: Okay. The witness has that</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 206</p> <p>1 document.</p> <p>2 BY MR. LeBLANC:</p> <p>3 Q Can you review that document, sir.</p> <p>4 A Okay. (Witness peruses document.)</p> <p>5 Okay.</p> <p>6 Q Can you tell me what this document is?</p> <p>7 A It's a memorandum, an internal memorandum.</p> <p>8 Q How does this relate to the Dimon versus Jenny</p> <p>9 C matter?</p> <p>10 A It seems to relate to the fact that the primary</p> <p>11 carrier of -- excuse me. There was a lot of rattling</p> <p>12 going on there. It seemed to relate to me to the bad</p> <p>13 faith action.</p> <p>14 Q Okay. Is the bad faith action and the Dimon</p> <p>15 versus Jenny C action the same thing in your mind?</p> <p>16 A They were independent actions.</p> <p>17 Q So with regards to the Dimon versus Jenny C,</p> <p>18 does that page K-0069 have any relation at all to Dimon</p> <p>19 versus Jenny C?</p> <p>20 A Well, the substance of the matter that they're</p> <p>21 discussing or that the memorandum seems to involve has to</p> <p>22 do with -- well, it says it, you know, we want to sue</p> <p>23 home for bad faith, which would be a separate action.</p> <p>24 Q Do you see where Mr. Moore is mentioned in that</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 208</p> <p>1 structured settlement.</p> <p>2 Q Okay. So it's Kemper's position here today</p> <p>3 that it has no idea what the policy provided for?</p> <p>4 MR. O'DRISCOLL: Objection to form. The</p> <p>5 witness didn't testify to that. But you may answer,</p> <p>6 Mr. Mensie.</p> <p>7 THE WITNESS: To the extent that I understood</p> <p>8 your question, which was a general question as to whether</p> <p>9 Kemper had an obligation, my testimony is that Kemper's</p> <p>10 obligation was to its insured. If Mr. Dimon in any way</p> <p>11 qualified as an insured, then the Kemper policy would</p> <p>12 have responded to its obligation to Mr. Dimon.</p> <p>13 BY MR. LeBLANC:</p> <p>14 Q Okay. And your testimony also was that you</p> <p>15 can't tell us what its obligation was because you haven't</p> <p>16 reviewed the policy; is that right?</p> <p>17 MR. O'DRISCOLL: Objection to form. What</p> <p>18 policy are we talking about here?</p> <p>19 MR. LeBLANC: The Kemper policy that brought it</p> <p>20 in to the Dimon versus Jenny C case, the excess policy.</p> <p>21 MR. O'DRISCOLL: Well, Mr. Mensie -- could you</p> <p>22 read back the question please, Joanne.</p> <p>23 (Record read as follows: And your</p> <p>24 testimony also was that you can't</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 207</p> <p>1 letter or in that note?</p> <p>2 A Yes.</p> <p>3 Q And do you know who Mr. Moore is?</p> <p>4 A I don't recall at this time.</p> <p>5 Q Mr. Mensie, did Kemper have any responsibility</p> <p>6 to that assignment in the Dimon versus Jenny C matter?</p> <p>7 MR. O'DRISCOLL: Objection to form.</p> <p>8 THE WITNESS: Kemper's obligation was to its</p> <p>9 insured.</p> <p>10 BY MR. LeBLANC:</p> <p>11 Q So it had no obligation to Mr. Dimon at all?</p> <p>12 A That's such a general question. Without having</p> <p>13 reviewed the policy I can't speak to that issue. I don't</p> <p>14 know if Mr. Dimon was a benefactor of that policy, and</p> <p>15 that goes to -- in my opinion it might even be a legal</p> <p>16 issue.</p> <p>17 Q How long have you known about your deposition</p> <p>18 being taken?</p> <p>19 A Several months maybe.</p> <p>20 Q Did you try to find the policy and find out</p> <p>21 what it provided?</p> <p>22 A I tried to find any and all documents that I</p> <p>23 could related to this case. The matter that -- the</p> <p>24 subject matter that we -- of the suit had to do with the</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 209</p> <p>1 tell us what its obligation was</p> <p>2 because you haven't reviewed the</p> <p>3 policy; is that right?)</p> <p>4 MR. O'DRISCOLL: Is the question whether</p> <p>5 Mr. Dimon was an insured under Kemper's excess policy?</p> <p>6 MR. LeBLANC: The question is exactly what the</p> <p>7 court reporter read, and I'd like the witness to answer</p> <p>8 the question.</p> <p>9 THE WITNESS: Well, the point you didn't add</p> <p>10 also is that I'm not knowledgeable of the law as it</p> <p>11 respects to what those obligations may have been. So in</p> <p>12 order to answer your question not only would I have to</p> <p>13 review the policy, I'd have to review the law.</p> <p>14 BY MR. LeBLANC:</p> <p>15 Q And you did neither before today's deposition?</p> <p>16 MR. O'DRISCOLL: Objection to the form of the</p> <p>17 question. Mr. Mensie is here to testify as a fact</p> <p>18 witness for Kemper. He is not here to testify as to</p> <p>19 legal judgments.</p> <p>20 MR. LeBLANC: Mr. Mensie is here to testify as</p> <p>21 the representative of Kemper.</p> <p>22 MR. O'DRISCOLL: Yes, as to facts, not legal</p> <p>23 opinions.</p> <p>24 MR. LeBLANC: The question was directed towards</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p>1 what Kemper knew. Mr. Mensie's testimony thus far seems</p> <p>2 to be that Kemper didn't know anything about what the</p> <p>3 policy was because they can't find it, and they haven't</p> <p>4 tried to -- or their attempts to locate it haven't been</p> <p>5 successful. I would like him to answer the question.</p> <p>6 MR. O'DRISCOLL: I think that mischaracterizes</p> <p>7 Mr. Mensie's testimony entirely.</p> <p>8 MR. LeBLANC: Read the question back again.</p> <p>9 (Record read as follows: And your</p> <p>10 testimony also was that you can't</p> <p>11 tell us what its obligation was</p> <p>12 because you haven't reviewed the</p> <p>13 policy; is that right?)</p> <p>14 MR. O'DRISCOLL: And we're talking about the</p> <p>15 actual excess policy?</p> <p>16 MR. LeBLANC: There's a question before the</p> <p>17 witness. He can answer it based on what the question is.</p> <p>18 THE WITNESS: Based on the documents that I</p> <p>19 have reviewed and my understanding of your question</p> <p>20 requires a broader understanding than I presently have</p> <p>21 regarding the obligations.</p> <p>22 BY MR. LeBLANC:</p> <p>23 Q So your testimony now is that you can't answer</p> <p>24 the question because you don't have a broad enough</p> <p>PRECISE REPORTING SERVICE, P.C.</p>	<p>1 now?</p> <p>2 A In order to answer your question, yes.</p> <p>3 Q Please do not look at any documents unless I</p> <p>4 ask you to look at the documents.</p> <p>5 A Are you trying to get a clear record or are</p> <p>6 you --</p> <p>7 Q This is the fourth time I suggested that you</p> <p>8 not do that, okay.</p> <p>9 MR. O'DRISCOLL: Mr. LeBlanc.</p> <p>10 MR. LeBLANC: For the record every time</p> <p>11 Mr. Mensie looks at a document when I don't ask him to do</p> <p>12 so, because I'm not in the room I can't tell.</p> <p>13 MR. O'DRISCOLL: Your questions call for very</p> <p>14 specific answers as to certain documents, and then you</p> <p>15 say that Mr. Mensie can't look at the documents.</p> <p>16 MR. LeBLANC: And that he doesn't.</p> <p>17 MR. O'DRISCOLL: Mr. LeBlanc has requested that</p> <p>18 you not look at any documents. Just testify as to your</p> <p>19 recollection and we'll go forward. What's the next</p> <p>20 question?</p> <p>21 MR. LeBLANC: I didn't get an answer to my</p> <p>22 prior question. There's a question pending before the</p> <p>23 witness.</p> <p>24 THE WITNESS: Could you repeat the question.</p> <p>PRECISE REPORTING SERVICE, P.C.</p>
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<p>1 understanding?</p> <p>2 A What the law was in '83 in terms of the --</p> <p>3 Q The question is: You can't answer the question</p> <p>4 because you don't have a broad enough understanding?</p> <p>5 MR. O'DRISCOLL: The witness is trying to</p> <p>6 explain.</p> <p>7 THE WITNESS: Of the law as respects to the</p> <p>8 obligations of the policy in 1983, that's correct.</p> <p>9 BY MR. LeBLANC:</p> <p>10 Q What about the terms of the policy. You don't</p> <p>11 know what those are, do you?</p> <p>12 A The terms of the policies are that Kemper would</p> <p>13 have an obligation to its insured.</p> <p>14 Q And who is that?</p> <p>15 A Without the policy before me, whether or not</p> <p>16 Mr. -- the insured -- I'm sorry, strike that. I do know.</p> <p>17 The insured --</p> <p>18 MR. O'DRISCOLL: I believe there was testimony</p> <p>19 previously about the insured in the case, but Mr. Mensie,</p> <p>20 you know, doesn't have the documents in front of him.</p> <p>21 THE WITNESS: The members of the Point Judith</p> <p>22 Fishman's Corporation is the insured.</p> <p>23 BY MR. LeBLANC:</p> <p>24 Q Mr. Mensie, are you looking at a document right</p> <p>PRECISE REPORTING SERVICE, P.C.</p>	<p>1 MR. LeBLANC: Joanne, could you repeat the</p> <p>2 question for a third time for Mr. Mensie.</p> <p>3 (Record read as follows: The question</p> <p>4 is: You can't answer the question</p> <p>5 because you don't have a broad enough</p> <p>6 understanding?)</p> <p>7 MR. O'DRISCOLL: He answered that.</p> <p>8 MR. LeBLANC: The question before that.</p> <p>9 (Record read as follows: So your</p> <p>10 testimony now is that you can't</p> <p>11 answer the question because you don't</p> <p>12 have a broad enough understanding?)</p> <p>13 MR. O'DRISCOLL: That's the same question.</p> <p>14 He's answered it.</p> <p>15 MR. LeBLANC: There was a question about</p> <p>16 whether or not he could tell us who -- what</p> <p>17 responsibility he had to Mr. Dimon. I don't believe he</p> <p>18 answered that question.</p> <p>19 MR. O'DRISCOLL: He answered all of the pending</p> <p>20 questions. If you have another question that's different</p> <p>21 from the one you've asked, you may pose that.</p> <p>22 MR. LeBLANC: He didn't answer all the pending</p> <p>23 questions, so we'll suspend on that issue.</p> <p>24 MR. O'DRISCOLL: There will be no suspension.</p> <p>PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 214</p> <p>1 MR. LeBLANC: Excuse me. I didn't hear that.</p> <p>2 Sorry.</p> <p>3 MR. O'DRISCOLL: There's not going to be any</p> <p>4 suspension, if you're talking about suspending the</p> <p>5 deposition and continuing on another day.</p> <p>6 MR. LeBLANC: That's your position. Thank you</p> <p>7 for noting that.</p> <p>8 That's all the questions I have for now</p> <p>9 until we come back.</p> <p>10 MR. O'DRISCOLL: Okay.</p> <p>11 MR. LeBLANC: I'm not concluding from MetLife's</p> <p>12 position. I'm suspending and allowing the other parties</p> <p>13 to ask questions.</p> <p>14 MR. O'DRISCOLL: Okay. Who is next?</p> <p>15 MS. McQUAY: Can I go next?</p> <p>16 MR. O'DRISCOLL: Yes, Sue.</p> <p>17 CROSS EXAMINATION</p> <p>18 BY MS. McQUAY:</p> <p>19 Q Okay. I have a few questions, Mr. Mensie. My</p> <p>20 name is Sue McQuay, and I represent Morgan Stanley in</p> <p>21 this case.</p> <p>22 And I noted in the documents that Kemper</p> <p>23 produced in this case there were in several places a</p> <p>24 reference to the settlement agreement in the Jenny C</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 216</p> <p>1 asked for a copy of the settlement agreement?</p> <p>2 A Yes.</p> <p>3 Q Okay. Does that lead you to believe, sir, that</p> <p>4 there was some hard copy of a settlement agreement in the</p> <p>5 Jenny C matter?</p> <p>6 A Taking in its actual context of this</p> <p>7 memorandum, yes, it does lead me to -- either that or the</p> <p>8 fact that I have seen a hard copy of the settlement</p> <p>9 agreement leads me to believe there was a settlement</p> <p>10 agreement.</p> <p>11 Q You have seen a hard copy of a settlement</p> <p>12 agreement?</p> <p>13 A I seem to recall having seen a settlement</p> <p>14 agreement, yes.</p> <p>15 Q Has that been produced by Kemper in this case?</p> <p>16 A My understanding is yes.</p> <p>17 Q Can you direct me to -- my attention to what</p> <p>18 constitutes that settlement agreement among the documents</p> <p>19 that Kemper has produced, which I believe are all in the</p> <p>20 room with you?</p> <p>21 MR. O'DRISCOLL: Yes, they're in the room, Sue.</p> <p>22 Are you asking the witness now to go through the</p> <p>23 documents?</p> <p>24 MS. McQUAY: If he believes that they contain.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 215</p> <p>1 matter. Do you recall seeing those references?</p> <p>2 A Not specifically in terms of where I may have</p> <p>3 seen them. I certainly seem to recall having read that.</p> <p>4 Q Let me direct your attention, for example, to</p> <p>5 the Kemper document that there is Bates stamped K-0125.</p> <p>6 Do you have that in front you, sir?</p> <p>7 MR. O'DRISCOLL: Not just yet, Sue. I'll have</p> <p>8 it in one second. This has also been marked for the</p> <p>9 record as Exhibit 6.</p> <p>10 BY MS. McQUAY:</p> <p>11 Q All right. Do you have that in front of you</p> <p>12 now, sir?</p> <p>13 A I do.</p> <p>14 Q And I direct your attention, for example, in</p> <p>15 the very first paragraph Mr. Noe states the settlement</p> <p>16 agreement -- and I'm quoting now: "The settlement</p> <p>17 agreement was to establish a fully paid annuity contract</p> <p>18 for a sum plus 3 percent compounded annually, added</p> <p>19 annually to be paid during the term of a plaintiff's life</p> <p>20 and in no event for less than 20 years." Do you see</p> <p>21 that?</p> <p>22 A Yes, I do.</p> <p>23 Q And down further in the next paragraph he, Mr.</p> <p>24 Noe, goes on to say that Charter Security's counsel has</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 217</p> <p>1 I may be mistaken, but I'd like him to identify for me</p> <p>2 what among these documents he believes constitutes the</p> <p>3 settlement agreement.</p> <p>4 MR. O'DRISCOLL: The witness has in front of</p> <p>5 him a document titled General Release.</p> <p>6 BY MS. McQUAY:</p> <p>7 Q All right. Is it your testimony, sir, that the</p> <p>8 document entitled General Release, which bears the Bates</p> <p>9 stamp No. K-0063 and K-0064, constitutes the settlement</p> <p>10 agreement?</p> <p>11 MR. O'DRISCOLL: I don't know that the witness</p> <p>12 has testified to that.</p> <p>13 MS. McQUAY: I'm asking him if that is his</p> <p>14 testimony.</p> <p>15 THE WITNESS: This is the agreement that I'm</p> <p>16 reading from the paragraph in the memorandum when asked</p> <p>17 the question, this was the agreement that I recall asking</p> <p>18 read.</p> <p>19 BY MS. McQUAY:</p> <p>20 Q Did you see anything else in any of the Kemper</p> <p>21 documents that you believe -- other than this general</p> <p>22 release that you believe constituted the settlement</p> <p>23 agreement?</p> <p>24 A Not that I recall.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 218</p> <p>1 Q It's your understanding or belief that when 2 there is a reference to a settlement agreement it is 3 referring to this general release, K-0063 to 0064; is 4 that correct?</p> <p>5 A Looking back on it retrospectively, this is the 6 document I thought they were referring to, yes.</p> <p>7 MS. McQUAY: Could we have this document, the 8 general release, marked as the next exhibit, please. 9 (Exhibit No. 10 was marked for 10 identification.)</p> <p>11 BY MS. McQUAY:</p> <p>12 Q In fact, sir, directing your attention to the 13 document produced by Kemper bearing the Bates stamp No. 14 K-0007, would you place that document in front of you, 15 please.</p> <p>16 MR. O'DRISCOLL: Mr. Mensie has the document in 17 front of him.</p> <p>18 BY MS. McQUAY:</p> <p>19 Q In fact that document reflects that Mr. Noe was 20 asking that he be sent a copy of the settlement 21 agreement, does it not?</p> <p>22 MR. O'DRISCOLL: Forgive me. I apologize. 23 Exhibit 6, K-0125, is that what you're asking about now?</p> <p>24 MS. McQUAY: No, it's K-0007, K-7. PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 220</p> <p>1 sent the proceedings.</p> <p>2 Q Before Judge Pettine?</p> <p>3 A Before Judge Pettine. Now, I don't recall if 4 within that document there was also settlement release 5 language.</p> <p>6 Q Okay. But am I correct in understanding that 7 you have seen nothing in any Kemper documents 8 constituting a settlement agreement other than the 9 general release and perhaps language within the 10 proceedings before Judge Pettine; is that correct?</p> <p>11 A That's -- I'm sorry. That would be my 12 recollection at this time.</p> <p>13 Q Okay. Thank you, sir. Now, going back to the 14 general release which has been marked as Exhibit 10, in 15 that general release Mr. Dimon releases all of his claims 16 in the Jenny C matter, does he not?</p> <p>17 A To the best of my understanding. That's 18 certainly what my understanding was, that there was an 19 intent to do.</p> <p>20 Q And in return for releasing all of his claims 21 in the Jenny C matter, that general release recites the 22 fact that he was to receive \$250,000 cash payment, 23 correct?</p> <p>24 A Correct. PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 219</p> <p>1 MR. O'DRISCOLL: Okay. Now we're on K-007.</p> <p>2 MS. McQUAY: Yes.</p> <p>3 BY MS. McQUAY:</p> <p>4 Q Do you have that document in front of you, sir?</p> <p>5 MR. O'DRISCOLL: Now he does. That's the first 6 time we referred to this today I believe.</p> <p>7 MS. McQUAY: All right.</p> <p>8 BY MS. McQUAY:</p> <p>9 Q In that Kemper document Mr. Noe asked Ms. Graci 10 to send him a copy of the settlement agreement, does he 11 not?</p> <p>12 A Yes.</p> <p>13 Q And down at the bottom of the document there's 14 a handwritten notation sent 7-26-83 release and 15 proceedings 5-3-83 before Judge Pettine, do you see that?</p> <p>16 A Yes.</p> <p>17 Q Do you see that, sir?</p> <p>18 A Yes.</p> <p>19 Q And does that further reinforce your belief 20 that the settlement agreement that is being referred to 21 in the Kemper documents is the general release?</p> <p>22 A I'd like to -- well, in order to answer your 23 question the person who interpreted this memo, that Mary 24 Graci, not only did she send the release, but she also PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 221</p> <p>1 Q And in addition he was to receive in return for 2 release of those claims a fully paid annuity contract for 3 his benefit with Charter Life Insurance Company to pay 4 him \$1,450 per month for one year following the execution 5 of that contract and thereafter such monthly sum 6 increased at the rate of 3 percent per year, compounded 7 annually, to be paid to him during the term of his life 8 and in no event for less than 20 years, correct?</p> <p>9 A Correct.</p> <p>10 Q Was such an annuity contract issued and 11 provided to Kemper for Mr. Dimon's benefit?</p> <p>12 MR. O'DRISCOLL: I'm sorry. I didn't get that 13 question, but if I could just ask Joanne to read it back 14 instead of asking you to.</p> <p>15 (Record read as follows: Was such an 16 annuity contract issued and provided 17 to Kemper for Mr. Dimon's benefit?)</p> <p>18 MR. O'DRISCOLL: Provided to Kemper for 19 Mr. Dimon's benefit?</p> <p>20 MS. McQUAY: Yes.</p> <p>21 MR. O'DRISCOLL: I'll object to the question as 22 compound.</p> <p>23 BY MS. McQUAY:</p> <p>24 Q Mr. Mensie? PRECISE REPORTING SERVICE, P.C.</p>

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<p>1 MR. O'DRISCOLL: Well, if I may object to the</p> <p>2 form of the question. It's a compound question. You're</p> <p>3 asking at least two questions in there.</p> <p>4 THE WITNESS: To the extent that I understand</p> <p>5 the question it was represented by Charter that the</p> <p>6 monies that Kemper paid to Charter would comply with the</p> <p>7 release requirements.</p> <p>8 BY MS. McQUAY:</p> <p>9 Q And what form did Charter make that</p> <p>10 representation?</p> <p>11 A The distribution of at least what I could seem</p> <p>12 to see was -- I seem to recall was there was actually a</p> <p>13 policy that was issued.</p> <p>14 Q That was my question: Did in fact Charter</p> <p>15 issue a policy that conformed to the requirements that</p> <p>16 resided here in the general release, Exhibit 10?</p> <p>17 A Yes.</p> <p>18 Q Okay. And did Kemper receive a copy of that</p> <p>19 policy?</p> <p>20 A It seems -- yes.</p> <p>21 Q All right. And is that what you have referred</p> <p>22 to and others have referred to from time to time as the,</p> <p>23 quote, original policy issued by Charter?</p> <p>24 A Yes.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p>1 you understand, Mr. Mensie, that it is your testimony on</p> <p>2 behalf of Kemper that this Exhibit 11 constituted an</p> <p>3 annuity policy issued by Charter Security that comported</p> <p>4 with requirements recited in the general release, Exhibit</p> <p>5 10?</p> <p>6 MR. O'DRISCOLL: May the witness review the</p> <p>7 document first.</p> <p>8 MS. McQUAY: Okay.</p> <p>9 MR. O'DRISCOLL: If you need the opportunity,</p> <p>10 William.</p> <p>11 THE WITNESS: I believe this is a document I</p> <p>12 reviewed previously and that it is in fact what my</p> <p>13 understanding was looking back on the record as the</p> <p>14 policy that was issued by Charter to comply with the</p> <p>15 requirements of the general release.</p> <p>16 BY MS. McQUAY:</p> <p>17 Q And does in fact in your view -- this annuity</p> <p>18 policy that was issued by Charter, did it in fact meet</p> <p>19 the requirements recited in the general release?</p> <p>20 A I seem to recall having read that it did, and</p> <p>21 in fact it says that: "Monthly payments in the amount of</p> <p>22 \$1,450.45, increasing 3 percent annually, commencing on</p> <p>23 June 6, 1983, for a period 240 months certain and life</p> <p>24 thereafter" is contained in the document.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
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<p>1 Q Is a copy of that original policy issued by</p> <p>2 Charter among the documents that Kemper has produced?</p> <p>3 A I believe they have been produced, yes.</p> <p>4 Q Would you identify, please, for the record what</p> <p>5 you believe to be the annuity policy issued by Charter</p> <p>6 that complied with requirements set forth in the general</p> <p>7 release?</p> <p>8 MR. O'DRISCOLL: The witness has in front of</p> <p>9 him a document marked K-0010.</p> <p>10 BY MS. McQUAY:</p> <p>11 Q And is that a multiple page document?</p> <p>12 A Yes.</p> <p>13 Q And what is the end -- would you give us the</p> <p>14 range of Bates stamp numbers comprising that document,</p> <p>15 please.</p> <p>16 A Yes, I will. One moment, please. It's K-0010</p> <p>17 through K-0020.</p> <p>18 MS. McQUAY: Would you mark that as Exhibit 11,</p> <p>19 please.</p> <p>20 (Exhibit No. 11 was marked for</p> <p>21 identification.)</p> <p>22 THE REPORTER: Okay, it's marked.</p> <p>23 BY MS. McQUAY:</p> <p>24 Q And just so the record is entirely clear, do</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p>1 Q Are you directing your attention in particular</p> <p>2 to page K-0019 of the annuity policy issued by Charter?</p> <p>3 A Yes.</p> <p>4 Q And therein it states up at the top, and I'm</p> <p>5 quoting now: "The undersigned surrenders said policies</p> <p>6 to the insurance company and concurrently herewith</p> <p>7 revokes any beneficiary designation and any election of</p> <p>8 settlement heretofore made under said policy"?</p> <p>9 A Yes, it does read there.</p> <p>10 Q And then it goes on to recite, as you have</p> <p>11 read, that the payee, the primary payee, Dennis Dimon, is</p> <p>12 to receive monthly payments in the amount of \$1,450.45,</p> <p>13 increasing 3 percent annually, commencing on June 6,</p> <p>14 1983, for a period of 240 months certain and life</p> <p>15 thereafter?</p> <p>16 A Yes.</p> <p>17 Q Okay. Now, directing your attention to page</p> <p>18 K-0015 of Exhibit 11, that page sets forth various</p> <p>19 settlement options, does it not?</p> <p>20 A Yes. It's titled Settlement Options.</p> <p>21 Q Do you see that, Mr. Mensie?</p> <p>22 A Yes. It's titled Settlement Options.</p> <p>23 Q Yes. And on the page it lays out various</p> <p>24 options; option 11 being limited payments. Do you see</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 226</p> <p>1 that?</p> <p>2 A Yes.</p> <p>3 Q And then option 2 is life income, life annuity.</p> <p>4 Do you see that?</p> <p>5 A Yes.</p> <p>6 Q And then you see next it says "with certain</p> <p>7 periods"?</p> <p>8 A Yes.</p> <p>9 Q And the option that is boldly titled "with</p> <p>10 certain periods" the document goes on to describe that</p> <p>11 option as being: "Equal monthly payments for five, ten</p> <p>12 or twenty years, the certain period, as elected, and</p> <p>13 thereafter for the remaining lifetime of the payee." Do</p> <p>14 you see that, sir?</p> <p>15 A Yes, I do.</p> <p>16 Q Now, I would like to direct your attention to</p> <p>17 the application submitted to Charter Life Insurance</p> <p>18 Company on behalf of Kemper or American Motorists, and in</p> <p>19 particular I want to -- this is marked, and I'm not sure</p> <p>20 I got the exhibit number, one second, please.</p> <p>21 MS. McQUAY: Off the record for a moment.</p> <p>22 (Discussion held off the record.)</p> <p>23 MS. McQUAY: Back on the record.</p> <p>24 BY MS. McQUAY:</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 228</p> <p>1 time.</p> <p>2 THE WITNESS: On counsel's advice I will --</p> <p>3 MR. O'DRISCOLL: Just to make clear, you had</p> <p>4 originally said, Sue --</p> <p>5 MS. McQUAY: Forget what I originally said. I</p> <p>6 struck that. The question now is would you look at</p> <p>7 Exhibit 3.</p> <p>8 MR. O'DRISCOLL: Well, you can strike it, but</p> <p>9 for the record originally you said the application that</p> <p>10 was submitted by Kemper/American Motorists. Now you're</p> <p>11 asking for a different document.</p> <p>12 MS. McQUAY: I struck it. Please, just look at</p> <p>13 Exhibit 3.</p> <p>14 BY MS. McQUAY:</p> <p>15 Q My question, sir, is: Do you have Exhibit 3 in</p> <p>16 front of you?</p> <p>17 A Based on representations of counsel I have</p> <p>18 Exhibit 3 in front of me.</p> <p>19 Q Sir, looking at Exhibit 3, do you see the</p> <p>20 paragraph 14, special requests?</p> <p>21 A I do.</p> <p>22 Q And do you see that someone has written into</p> <p>23 that space in handwriting: "Immediate annuity, 20 years</p> <p>24 certain, 3 percent increases"?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 227</p> <p>1 Q Mr. Mensie, would you look at Exhibit 3,</p> <p>2 please.</p> <p>3 MR. O'DRISCOLL: Well, Sue, you said the</p> <p>4 application that was submitted by Kemper/American</p> <p>5 Motorists?</p> <p>6 MS. McQUAY: My only question now is:</p> <p>7 Mr. Mensie, would you look at Exhibit 3, please.</p> <p>8 MR. O'DRISCOLL: Exhibit 3.</p> <p>9 BY MS. McQUAY:</p> <p>10 Q Do you have that in front of you, sir?</p> <p>11 MR. O'DRISCOLL: No. Exhibit 3 is the</p> <p>12 application as the witness has testified was modified.</p> <p>13 MS. McQUAY: Well, whatever the testimony. The</p> <p>14 only question now is would you look at Exhibit 3.</p> <p>15 MR. O'DRISCOLL: Yes, the witness has that in</p> <p>16 front of him.</p> <p>17 MS. McQUAY: Thank you.</p> <p>18 BY MS. McQUAY:</p> <p>19 Q Now, Mr. Mensie, looking at Exhibit 3 in the</p> <p>20 space, paragraph 14, special requests, there is some</p> <p>21 handwritten notations. Do you see that?</p> <p>22 A I'm not sure I have in front of me Exhibit 3.</p> <p>23 MR. O'DRISCOLL: This is Exhibit 3. This is</p> <p>24 the document that Ms. McQuay is asking about at this</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 229</p> <p>1 A 20 years certain, 3 percent increases.</p> <p>2 Q Yes, sir.</p> <p>3 A Yes.</p> <p>4 Q 20 years certain, 3 percent increases, sir.</p> <p>5 Going back to Exhibit 11, the annuity contract issued by</p> <p>6 Charter and page K-0015 which we had been looking at</p> <p>7 where it describes settlement options.</p> <p>8 A Yes.</p> <p>9 Q Would you infer, sir, that a 20 year certain, 3</p> <p>10 percent increases comports with the settlement option</p> <p>11 captioned "with certain periods"?</p> <p>12 MR. O'DRISCOLL: Sue, I'm sorry. I just need</p> <p>13 to clarify for the record -- and if you understand the</p> <p>14 question, please just answer, Mr. Mensie. I wasn't sure</p> <p>15 I did.</p> <p>16 THE WITNESS: I didn't understand the question.</p> <p>17 I'm sorry.</p> <p>18 BY MS. McQUAY:</p> <p>19 Q I'm trying to refer to various settlement</p> <p>20 options, one of which is "with certain period," correct?</p> <p>21 A Yes.</p> <p>22 Q Okay. And that option caption "with certain</p> <p>23 period" is described as being one that includes equal</p> <p>24 monthly payments for five, ten or twenty years as elected</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 230</p> <p>1 and thereafter for the remaining lifetime of the payee.</p> <p>2 Do you see that?</p> <p>3 A Yes.</p> <p>4 Q Looking at Exhibit 3 where it says 20 years</p> <p>5 certain, 3 percent increases, would you infer that that</p> <p>6 refers to the settlement option described as with certain</p> <p>7 period and with an election of 20 years?</p> <p>8 MR. O'DRISCOLL: 20 years and thereafter for</p> <p>9 the remaining lifetime of the payee?</p> <p>10 MS. McQUAY: Yes.</p> <p>11 THE WITNESS: I'm still not sure that I</p> <p>12 understand the question; but with respects to an attempt</p> <p>13 to understand it, I'll have to phrase what I think you're</p> <p>14 asking me and that is whether or not the settlement</p> <p>15 option captioned here with the certain period complies</p> <p>16 with the special request. I'm not clear whether it does</p> <p>17 or it does not because, you know, I haven't worked with</p> <p>18 the drafting of the annuity policies, but the part that</p> <p>19 closer resembles that request is the Exhibit K-0019.</p> <p>20 BY MS. McQUAY:</p> <p>21 Q Okay. When you say the -- that quotes the part</p> <p>22 that K-0019 more closely resembles that request, what are</p> <p>23 you referring to?</p> <p>24 A The fact that it reads the 20 year certain, 3</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 232</p> <p>1 A Yes, I do.</p> <p>2 Q And in the next sentence it states -- Mr. Noe</p> <p>3 states in the letter at least: "After consultation with</p> <p>4 Mr. Boncher, we agreed with the condition that we will</p> <p>5 not guarantee payments, and plaintiff will have no</p> <p>6 recourse against defendants or carriers in the event of</p> <p>7 default by the life insurance company." Do you see that,</p> <p>8 sir?</p> <p>9 A Yes, I do.</p> <p>10 Q Now, when it says that after consultation with</p> <p>11 Mr. Boncher, we agreed, who is Mr. Boncher?</p> <p>12 A He was a Kemper employee at the time. I'm not</p> <p>13 sure what his actual position was.</p> <p>14 Q Well, do you know what his responsibilities</p> <p>15 were generally vis-a-vis those of Mr. Noe?</p> <p>16 A They were on the home office staff.</p> <p>17 Q Do you know if he was essentially a peer of Mr.</p> <p>18 Noe, or was he a superior?</p> <p>19 A Based on the fact that he suggested he</p> <p>20 consulted with him, it would infer to me that he was his</p> <p>21 superior.</p> <p>22 Q But you're unable to say that for certain, am I</p> <p>23 correct?</p> <p>24 A At that specific time I couldn't -- I didn't</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 231</p> <p>1 percent annually; whereas this one, the certain period</p> <p>2 equal -- it says equal monthly payments in the settlement</p> <p>3 option.</p> <p>4 Q Okay. So in any event, what Kemper received</p> <p>5 from Charter as being the annuity policy issued by</p> <p>6 Charter specifically provided right here on page K-0019,</p> <p>7 that in fact the payee, Mr. Dimon, was to receive monthly</p> <p>8 payments as recited for a period of 240 months certain or</p> <p>9 20 years and life thereafter, correct?</p> <p>10 A That is correct.</p> <p>11 Q Okay. Now, bear with me one moment, please.</p> <p>12 Directing your attention, sir, to Exhibit</p> <p>13 5 please again.</p> <p>14 MR. O'DRISCOLL: Just give me one moment, Sue.</p> <p>15 Here we go. The witness has Exhibit 5 in</p> <p>16 front of him.</p> <p>17 BY MS. McQUAY:</p> <p>18 Q Sir, I'd like to direct your attention to the</p> <p>19 second paragraph of Exhibit 5 and in particular the</p> <p>20 portion of that paragraph that begins: "Plaintiff's</p> <p>21 attorney agreed that if I would pay \$175,000 and agree to</p> <p>22 the nominal owner of the annuity, he would place it with</p> <p>23 an A rated life insurance company." Do you see that,</p> <p>24 sir?</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 233</p> <p>1 see any records at 1983 as to exactly what position the</p> <p>2 respective parties held.</p> <p>3 Q Okay. Now, when it says that he, Mr. Boncher,</p> <p>4 agreed that they would do as plaintiff's attorney</p> <p>5 requested with a condition that we will not guarantee</p> <p>6 payments and plaintiff will have no recourse against</p> <p>7 defendants or carriers in the event of default by the</p> <p>8 life insurance company, what do you understand him to be</p> <p>9 saying there?</p> <p>10 A That if the life company defaulted, Kemper</p> <p>11 wouldn't make the payments.</p> <p>12 Q And what do you understand to be their concern</p> <p>13 in that regard?</p> <p>14 A That they didn't have knowledge about Charter</p> <p>15 at the time. They didn't know who Charter Life was, or</p> <p>16 simply they were trying to -- you know, the whole purpose</p> <p>17 of their involvement was to extinguish all claims against</p> <p>18 its insured and thereby Kemper.</p> <p>19 Q Okay. Any other purpose that you can think of</p> <p>20 was motivating them, Mr. Boncher and Mr. Noe, to sort of</p> <p>21 reach this agreement between themselves?</p> <p>22 A Well, the fact that it, you know -- as I read</p> <p>23 everything in this context, I think, you know, it was</p> <p>24 just clear that this was the plaintiff's deal and that</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 234</p> <p>1 just further reflected that they were saying, you know, 2 we have nothing to do with this deal, you know, in terms 3 of making representations of further allegations. 4 Q Now, in your review of Kemper's files in this 5 matter, was any such condition ever in fact agreed to and 6 provided for as part of the settlement agreement? 7 A I didn't see anything in any of the agreements 8 that talked about the default of the life company. 9 Q So based on your review of all the documents in 10 Kemper's claim file, you saw nothing that indicated that 11 this condition was in fact agreed to and provided for as 12 part of the settlement; is that correct? 13 MR. O'DRISCOLL: Objection to form. 14 BY MS. McQUAY: 15 Q You may answer, Mr. Mensie. 16 A Not that I recall. I'd have to rereview the 17 release, but I don't recall that, no, specifically the 18 use of the word default of the life company. 19 Q Okay. Well, let's look at the release. 20 A Okay. 21 Q You have it there, do you not, sir, Exhibit 10? 22 A They keep removing them. 23 MR. O'DRISCOLL: Yes. 24 BY MS. McQUAY: PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 236</p> <p>1 hasn't been a default by the life insurance company in 2 this case. 3 BY MS. McQUAY: 4 Q Fine. Would you answer my question first, 5 Mr. Mensie. 6 A I'll certainly try. I didn't read anything 7 that was as specific or as narrow as your question. 8 Q Okay. Now, would you agree with the statement 9 that your counsel just made, that in point of fact there 10 has been no default in this case? 11 A To my knowledge that was not at issue here. 12 There was no default. 13 Q And could you explain for the record, sir, why 14 you say that to be the case? 15 A Well, there's two things, that the -- the 16 payments were continuing. My understanding was that 17 payments continued, so there was no indication whatsoever 18 that I saw that there was any default; and the claim is 19 not one claiming that the life company defaulted. The 20 life company simply changed the conditions of the 21 contract, and the claim is one of breach of contract is 22 my understanding. 23 Q What do you understand a default to be, sir? 24 A Failure to pay. PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 235</p> <p>1 Q Do you have it now, sir? 2 A Not yet. 3 Q Would you look at it, please, and my question: 4 Am I not correct in that the release contains no such 5 condition as we have been discussing? 6 A The release just purports to release any and 7 all such claims. Taken to its broadest generality I 8 guess you could encompass the default of a life company 9 as being further claims. 10 Q But nowhere in the release is there any 11 reference to the fact that Kemper in providing the 12 annuity policy described in the release is at the same 13 time providing that policy on the condition that it will 14 not guarantee payment, and Mr. Dimon will have no 15 recourse against Kemper or the defendants in the event of 16 default by the life insurance company; is that correct? 17 MR. O'DRISCOLL: I'm going to just object and 18 state for the record that I question the relevance of 19 this where there has been no default of the life 20 insurance company of this case. 21 MS. McQUAY: I'm sorry. You got broken up. 22 Would you restate that, please. 23 MR. O'DRISCOLL: Yes. I just object to the 24 form of the question and to its relevance where there PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 237</p> <p>1 Q And in this case there has been no default, but 2 how would you characterize what has happened in this 3 case? 4 A Well, let me strike and clarify my answer. I 5 guess I was a little brief when I said a failure to pay. 6 A failure to pay because of an inability to pay would 7 probably be more precise my understanding of a default. 8 Q Okay. So when Kemper was talking about we're 9 not going to guarantee or there won't be any recourse if 10 there's a default, you were anticipating, what you 11 understood you were talking about was a default because 12 Charter went under, for example, and couldn't pay, 13 correct? 14 A A bankruptcy, yes. 15 Q And that certainly is not the case here, sir? 16 A That's correct. 17 Q Here what we have is a situation where they are 18 simply claiming they're not obligated to pay; it's not 19 that they can't pay, correct? 20 A That's my understanding. 21 Q Thank you, sir. 22 Sir, now I would like to direct your 23 attention, if I may, to Exhibit 6, please. 24 MR. O'DRISCOLL: Just removing the other PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 238</p> <p>1 exhibits, and the witness has Exhibit 6 in front of him, 2 Sue. 3 BY MS. McQUAY: 4 Q In Exhibit 6, sir, Mr. Noe, this is November of 5 1983, he says in his memo that he is now dealing with 6 Charter Security's counsel in Jacksonville, Florida. He 7 has asked for a copy of the settlement agreement. Do you 8 see that, sir? 9 A Yes. 10 Q Do you know -- well, strike that. 11 What was the nature of Mr. Noe's dealings 12 with Charter Security's counsel in Jacksonville, Florida 13 at that point? 14 A As the memo outlines he was -- the counsel for 15 Charter had requested a copy of the settlement agreement, 16 and that's as far as I could glean from the information 17 that I reviewed. 18 Q Do you know what came from Mr. Noe's dealings 19 with Charter Security's counsel in Jacksonville, Florida? 20 A I do not. 21 Q Do you know what further transpired between 22 them after November 8, 1983? 23 A I don't recall seeing any further 24 communications or any communications relative to counsel PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 240</p> <p>1 Q Well, let me just ask it this way: Now, it was 2 Kemper's position back in 1983, certainly as of November 3 1983, that the policy issued by Charter was in fact what 4 was required under the settlement agreement and in fact 5 was a valid and enforceable contract, correct? 6 A Yes. 7 Q Has that continued to be Kemper's position 8 today? 9 A Yes. 10 MS. McQUAY: Thank you, sir. I have nothing 11 further. 12 MR. DeWICK: This is Jed DeWick. I just have a 13 couple if I may. 14 CROSS EXAMINATION 15 BY MR. DeWICK: 16 Q Mr. Mensie, again my name is Jed DeWick. I 17 represent the Latti entities in this action. 18 First of all, I believe you touched in 19 general on this subject, but I just wanted to get it a 20 little clearer on the record. You obviously were not 21 with Kemper in 1983, correct? 22 A Correct. 23 Q And you were not personally involved with the 24 settlement of this Dimon verse Jenny C matter, correct? PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 239</p> <p>1 in Jackson, Florida [sic]. 2 Q Are you able to describe what if any further 3 steps Kemper took after this date, November 1983, to 4 insure that the policy they had received from Charter 5 would continue to be honored? 6 A I couldn't -- I didn't see evidence of 7 anything. I'm not sure that Kemper could have taken any 8 other steps, but I didn't see anything that suggested 9 that Mr. Noe or anyone else on Kemper's behalf had taken 10 further steps. 11 Q So as far as you are aware, after November 12 1983, it just simply continued to be Kemper's position 13 that the original policy issued was valid and enforceable 14 and should be honored, correct? 15 A That is correct. 16 Q Now, you testified yesterday, because I wrote 17 this down in my notes, you testified yesterday, 18 Mr. Mensie, that you did not believe there was much of a 19 dispute here. Could you explain that, please. 20 MR. O'DRISCOLL: I'm sorry, Sue. Could you 21 give more context to that? 22 MS. McQUAY: I'm not sure I can. Let's see if 23 I can. 24 BY MS. McQUAY: PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 241</p> <p>1 A Correct. 2 Q And you were not involved in any aspect in the 3 obtaining of the annuity that was part of that 4 settlement, correct? 5 A That's correct. 6 Q So your knowledge of this entire matter is 7 based in part upon your review of all the documents that 8 have been produced in this litigation, correct? 9 A That is correct. 10 Q As well as in part based on your experience in 11 the insurance industry? 12 A Yes, sir. 13 Q And as well as your knowledge in general of 14 Kemper's policies and procedures, correct? 15 A Correct. 16 Q And you have not had any discussions with 17 anyone who had firsthand knowledge of the underlying 18 settlement agreement, correct? 19 A That is correct. 20 Q And you do not know of anyone that is still 21 employed by Kemper who has such firsthand knowledge, do 22 you? 23 A I do not. 24 Q Are you a lawyer, Mr. Mensie? PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 242</p> <p>1 A No.</p> <p>2 Q Do you have any legal training at all?</p> <p>3 A Other than as it relates to claim handling.</p> <p>4 Q Could you just expand on that. What training</p> <p>5 do you have, legal training do you have, as it relates to</p> <p>6 claim handling?</p> <p>7 A A working knowledge of the law necessary to</p> <p>8 handle claims that I'm charged with handling.</p> <p>9 Q Is that the law of liability, if you could just</p> <p>10 be a little bit more --</p> <p>11 A Basic principles of -- basic legal principles</p> <p>12 and understanding of the process and systems.</p> <p>13 Q And when you say "basic legal principles,"</p> <p>14 again do you mean --</p> <p>15 A Principles of negligence, torts, contracts.</p> <p>16 Q Negligence, torts, contracts?</p> <p>17 A Negligence or torts, and I said contracts is</p> <p>18 what I said, an understanding of, you know, the parties</p> <p>19 of a contract.</p> <p>20 Q And so when you say you have a working</p> <p>21 knowledge of it, have you had specific training, or is</p> <p>22 this training you've acquired through performance of your</p> <p>23 job over the years?</p> <p>24 A Performance of the job.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 244</p> <p>1 Q They are a part of the Kemper Group?</p> <p>2 A Yes.</p> <p>3 Q And the Kemper Group is not -- and correct me</p> <p>4 if I'm wrong obviously, the Kemper Group is not an entity</p> <p>5 unto itself, but it is a trade name under which certain</p> <p>6 entities operate; is that correct?</p> <p>7 A That is correct.</p> <p>8 Q So in your capacity here testifying on behalf</p> <p>9 of Kemper, are you also testifying on behalf of each</p> <p>10 insurance company insofar as they operate under the</p> <p>11 Kemper trade name?</p> <p>12 A With respect to American Motorists, yes.</p> <p>13 MR. DeWICK: Thank you very much. I have</p> <p>14 nothing further.</p> <p style="text-align: center;">CROSS EXAMINATION</p> <p>16 BY MR. KEANE:</p> <p>17 Q Mr. Mensie, my name is Brian Keane. I just</p> <p>18 have a few questions as well. I represent the Plaintiff</p> <p>19 Dennis Dimon in this matter.</p> <p>20 A Yes, sir.</p> <p>21 Q If I could have you look at Exhibit 11. Do you</p> <p>22 have that in front of you?</p> <p>23 MR. O'DRISCOLL: I'm just getting it for him,</p> <p>24 Brian.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 243</p> <p>1 Q So there has been no formal training?</p> <p>2 A You know, I've attended training courses, I've</p> <p>3 attended continuing education courses and things of that</p> <p>4 nature over the years.</p> <p>5 Q And those courses dealt with what you spoke of,</p> <p>6 legal principles with respect to torts?</p> <p>7 A Yes, sir.</p> <p>8 Q When you testified earlier that Kemper had no</p> <p>9 involvement in obtaining the quote from Charter Life for</p> <p>10 the life annuity, again that is based on your review of</p> <p>11 all the documents in this litigation?</p> <p>12 A That's correct.</p> <p>13 Q So you have no firsthand knowledge that they</p> <p>14 had no such involvement; is that correct?</p> <p>15 A No independent knowledge, that is correct.</p> <p>16 Q In all your years of experience with annuities</p> <p>17 have you ever encountered an incident such as this one</p> <p>18 where an after annuity contract issued, the issuing</p> <p>19 company claimed that there had been a clerical error with</p> <p>20 regard to the terms?</p> <p>21 A No.</p> <p>22 Q You testified yesterday that American Motorists</p> <p>23 Company still exists?</p> <p>24 A Yes.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 245</p> <p>1 THE WITNESS: Yes, sir.</p> <p>2 BY MR. KEANE:</p> <p>3 Q I just wanted to follow up on some of the</p> <p>4 questions Attorney McQuay was asking you. If you turn to</p> <p>5 page K-0015, it looks like Attorney McQuay was asking you</p> <p>6 questions about the highlighted and capital section "with</p> <p>7 certain period." Is it your understanding that that</p> <p>8 section of the settlement options falls under option 2,</p> <p>9 life income, down below on the left side?</p> <p>10 A Yes.</p> <p>11 Q And if you turn to K-0010 at the beginning of</p> <p>12 Exhibit 11, at about a quarter of the way down it says:</p> <p>13 Option 2. Life Income with a star. Do you see that?</p> <p>14 A Which paragraph are you referring to?</p> <p>15 Q It's about a quarter of the way down on the</p> <p>16 document. It's below the numbers, and it says: "Option</p> <p>17 2. Life Income" with a star.</p> <p>18 A Yes, I see it.</p> <p>19 Q Now, does that relate to what's on page K-0015</p> <p>20 in regards to Option 2, life income?</p> <p>21 A I would think so. I don't see any other option</p> <p>22 2s in the policy.</p> <p>23 Q And therefore this policy issued by Charter</p> <p>24 Security Life would be for the life of the person for who</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 246</p> <p>1 it was issued for; is that correct?</p> <p>2 A It represents to be so.</p> <p>3 Q If you'd look at page K-0018 of Exhibit 11.</p> <p>4 The signature, can you tell me what that signature says?</p> <p>5 A Reads Barbara Boehm.</p> <p>6 Q And does it say that Barbara Boehm is from</p> <p>7 Charter Life Insurance Company?</p> <p>8 A Yes, it does.</p> <p>9 Q Can you tell me the date that is typed just</p> <p>10 above that area?</p> <p>11 A 17th June, 1983.</p> <p>12 Q Is it your understanding June 17th, 1983, is</p> <p>13 after the settlement hearing in front of Judge Pettine in</p> <p>14 this matter?</p> <p>15 A Yes.</p> <p>16 Q And that's because the settlement hearing</p> <p>17 actually took place on June 3rd, 1983, correct?</p> <p>18 A I recall that it was before the policy was</p> <p>19 issued. My reading was and that was consistent with the</p> <p>20 record. It was consistent with the record the policy --</p> <p>21 the record in the hearing that was being represented to</p> <p>22 the court for the approval of the settlement, and then</p> <p>23 this document were consistent.</p> <p>24 Q Okay. On Exhibit 11, if you could look at</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 248</p> <p>1 Mr. Noe, and we were referring to some of the documents</p> <p>2 of the letters going back between Charter Security, Mr.</p> <p>3 Noe, and you said that -- the testimony was that</p> <p>4 something looked unusual to you with regard to Mr. Noe's</p> <p>5 signature. Can you elaborate for me what you meant by</p> <p>6 that?</p> <p>7 A The -- I was being asked to compare certain</p> <p>8 documents. It was the application and the signatures</p> <p>9 that while one was clear, the other was not. However,</p> <p>10 just the lines just struck me as suspect in that, you</p> <p>11 know, how often do people sign documents in the same</p> <p>12 space which it appeared to me; and as I testified, I'm</p> <p>13 not a handwriting expert or anything, but it just struck</p> <p>14 me as odd to see that the signatures appeared to be</p> <p>15 matched up; and I think the inference was that he had</p> <p>16 signed both documents at different times.</p> <p>17 Q You also yesterday in regard to talking about</p> <p>18 the changes that were made by Charter, you described</p> <p>19 those changes as unilateral or that they did something</p> <p>20 unilaterally. What did you mean by that?</p> <p>21 A Well, the fact that they took it upon</p> <p>22 themselves to modify a contract that they had issued and</p> <p>23 abide by the terms that they had framed versus that which</p> <p>24 had been represented to the court that existed, and the</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 247</p> <p>1 K-0019.</p> <p>2 A Yes, sir.</p> <p>3 Q The settlement agreement, correct?</p> <p>4 A Yes.</p> <p>5 Q Who would have filled that out?</p> <p>6 A It appears to me this was filled out by</p> <p>7 Charter.</p> <p>8 Q Now, for this annuity contract, the Charter</p> <p>9 Security Life annuity contract, it was Kemper's money</p> <p>10 from the excess coverage for the Point Judith Fishermen's</p> <p>11 Association, it was actually Kemper's money, the \$175,000</p> <p>12 from that policy of insurance, that went to fund this</p> <p>13 annuity, correct?</p> <p>14 A It was money paid out by Kemper is my</p> <p>15 understanding, yes.</p> <p>16 Q And as a matter of fact, Kemper became part</p> <p>17 owner of that annuity contract, correct?</p> <p>18 A That was my understanding, yes.</p> <p>19 Q You testified, and I just wanted to follow up</p> <p>20 with you, you were actually adjusting this claim on</p> <p>21 behalf of the specific claim that we're here for today on</p> <p>22 behalf of Kemper, correct?</p> <p>23 A Correct.</p> <p>24 Q You testified yesterday you were talking about</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 249</p> <p>1 parties to that agreement were not in agreement with them</p> <p>2 in doing so. So they just took it upon themselves to</p> <p>3 continue to make these payments when at least in their</p> <p>4 understanding they were suggesting the terms were not as</p> <p>5 they wanted them to be.</p> <p>6 Q What do you think that Charter Security Life</p> <p>7 should have done in this situation?</p> <p>8 A I think they're obligated -- if they were in</p> <p>9 fact cancelling the original agreement, I think they were</p> <p>10 obligated to refund the money.</p> <p>11 Q And that would be refunded to Kemper?</p> <p>12 A That would have been a refund to Kemper.</p> <p>13 Q If you could look at what's been marked as</p> <p>14 Exhibit 2.</p> <p>15 MR. O'DRISCOLL: Okay. Let me just get that</p> <p>16 for Mr. Mensie.</p> <p>17 MR. DeWICK: I'm sorry. Brian, what document</p> <p>18 was that Bates labeled?</p> <p>19 MS. McQUAY: K-107.</p> <p>20 THE WITNESS: Okay.</p> <p>21 BY MR. KEANE:</p> <p>22 Q If you look at Exhibit 2, in box 12, I'll read</p> <p>23 it to you: "Will this annuity replace or change any</p> <p>24 existing life insurance or annuity contract?" And the</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 250</p> <p>1 check mark says no; is that right?</p> <p>2 A It is checked no or X'd no.</p> <p>3 Q And if you look at Exhibit 3, which is a</p> <p>4 document that was produced by Attorney LeBlanc in</p> <p>5 anticipation of this deposition, do you have that in</p> <p>6 front of you?</p> <p>7 MR. O'DRISCOLL: I'll get that for him right</p> <p>8 now.</p> <p>9 THE WITNESS: Yes, sir, I have it in front of</p> <p>10 me.</p> <p>11 BY MR. KEANE:</p> <p>12 Q Would you agree with me that Exhibit 2 and</p> <p>13 Exhibit 3 are different specifically in respects to</p> <p>14 signatures in boxes 14 and 15?</p> <p>15 A Boxes 14 and 15 in Exhibit 3 contain</p> <p>16 handwritten statements, and the second part of your</p> <p>17 question pertained to the signature?</p> <p>18 Q Yes, the signatures on the left side of Exhibit</p> <p>19 3 are different than Exhibit 2; is that correct?</p> <p>20 A That is -- well, there are signatures on</p> <p>21 Exhibit 3 that are not on Exhibit 2, correct.</p> <p>22 Q Thank you. And if you look at Exhibit 3 in box</p> <p>23 12, it also says: "Will this annuity replace or change</p> <p>24 any existing life insurance or annuity contract?" And</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 252</p> <p>1 Q Did you answer?</p> <p>2 A To the extent of my understanding of the</p> <p>3 question, it seems that the addition of 14, which</p> <p>4 certainly changes the substance of it, as well as, as</p> <p>5 counsel pointed out yesterday, even the name is being</p> <p>6 changed, that that box 12 should have been marked X as</p> <p>7 yes because the attempt being that there was a change of</p> <p>8 an existing contract.</p> <p>9 Q And in fact you just testified that if there</p> <p>10 was going to be a change, there should not be a new</p> <p>11 contract; the money should be refunded to Kemper; isn't</p> <p>12 that right?</p> <p>13 A If there was no -- if there was no meeting of</p> <p>14 the minds, then I think that is -- you know, I'm not</p> <p>15 certain what the laws are concerning that; but it seemed</p> <p>16 to me that if you were in fact changing the beneficiary</p> <p>17 stream, which is the substance of the contract, and you</p> <p>18 did not have a meeting of the mind and there had been</p> <p>19 reference in it to the court that this vehicle to pay the</p> <p>20 benefits that the court signed off on was being modified,</p> <p>21 then the entire deal had to be ended.</p> <p>22 MR. KEANE: Mr. Mensie, that's all I have.</p> <p>23 Thank you.</p> <p>24 MR. LeBLANC: Mr. O'Driscoll, do you have any</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 251</p> <p>1 again the no is checked; is that right?</p> <p>2 A That is correct.</p> <p>3 Q Wouldn't the addition of the information</p> <p>4 contained in box 14 and 15 change the prior annuity</p> <p>5 contract?</p> <p>6 A Yes. I mean --</p> <p>7 Q Would you agree with me that it was incorrect</p> <p>8 to check off no with regard to the question in No. 12?</p> <p>9 MR. O'DRISCOLL: I'm sorry. Could you restate</p> <p>10 that question?</p> <p>11 BY MR. KEANE:</p> <p>12 Q Mr. Mensie, would you agree with me that it was</p> <p>13 wrong for whoever filled this out to check off no in</p> <p>14 answer to question -- the question in box No. 12?</p> <p>15 MR. O'DRISCOLL: This is asking if it was wrong</p> <p>16 for Charter Security Life to do it?</p> <p>17 MR. KEANE: Yes.</p> <p>18 BY MR. KEANE:</p> <p>19 Q Mr. Mensie, did you answer?</p> <p>20 MR. O'DRISCOLL: The question No. 12: Will</p> <p>21 this annuity replace or change any existing life</p> <p>22 insurance or annuity contract?</p> <p>23 MR. KEANE: Exactly.</p> <p>24 BY MR. KEANE:</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 253</p> <p>1 questions before I ask a couple?</p> <p>2 MR. O'DRISCOLL: No, not at this time.</p> <p>3 REDIRECT EXAMINATION</p> <p>4 BY MR. LeBLANC:</p> <p>5 Q Mr. Mensie, I'd like you to look at Exhibit 2</p> <p>6 and 3 if you could. Do you have those exhibits in front</p> <p>7 of you?</p> <p>8 A Yes, I do.</p> <p>9 Q Thank you. First on Exhibit 3, just looking at</p> <p>10 Exhibit 3, is there anything on this application that</p> <p>11 requests a lifetime annuity be issued?</p> <p>12 A On 3?</p> <p>13 Q On Exhibit 3.</p> <p>14 MR. O'DRISCOLL: On the application itself?</p> <p>15 MR. LeBLANC: Yes.</p> <p>16 BY MR. LeBLANC:</p> <p>17 Q Anything to indicate in this application that a</p> <p>18 lifetime annuity is being applied for?</p> <p>19 MR. O'DRISCOLL: I mean, well, you can answer</p> <p>20 the question, Mr. Mensie, whether there's anything on the</p> <p>21 application itself.</p> <p>22 THE WITNESS: There's nothing that I see on</p> <p>23 application indicating life.</p> <p>24 BY MR. LeBLANC:</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 254</p> <p>1 Q And if you look at Exhibit 2, is there anything</p> <p>2 on that application that indicates a lifetime annuity was</p> <p>3 applied for?</p> <p>4 A Again, I don't see anything on Exhibit 2</p> <p>5 indicating life.</p> <p>6 Q Okay. If we refer back to Exhibit 3, in box 9</p> <p>7 it says: Type of contract single premium immediate</p> <p>8 annuity. Do you see where it says that?</p> <p>9 A Box 9 it says: Type of contract single premium</p> <p>10 deferred annuity. Deferred is marked off and above it is</p> <p>11 handwritten immediate.</p> <p>12 Q Okay. Was there any indication in any of your</p> <p>13 review of the documents in the claim file in this case</p> <p>14 that Kemper intended to apply for a deferred annuity?</p> <p>15 A I don't recall seeing those terms in the</p> <p>16 documents that I recall at this time.</p> <p>17 Q Now, in your experience in the insurance and</p> <p>18 annuity industry, the term 20 year certain, does that</p> <p>19 imply a lifetime annuity, just those words?</p> <p>20 MR. O'DRISCOLL: When read in conjunction with</p> <p>21 the contract?</p> <p>22 MR. LeBLANC: No, on the application, 20 year</p> <p>23 certain, does that mean lifetime?</p> <p>24 THE WITNESS: Certain -- go ahead. I'm sorry.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 256</p> <p>1 20 year certain, that's what was applied for, wasn't it,</p> <p>2 Mr. Mensie?</p> <p>3 MR. O'DRISCOLL: Are you asking him what was</p> <p>4 applied for or what it says in the box?</p> <p>5 MR. LeBLANC: What it says in the box.</p> <p>6 THE WITNESS: Thank you for clarifying that. I</p> <p>7 just read what it says in the box. The certain period as</p> <p>8 signified by definition of the contract is outlined in a</p> <p>9 previous question that had been asked of me where I think</p> <p>10 it was one of the exhibits that, titled settlement</p> <p>11 options, I think the company defines certain period to</p> <p>12 the extent that it talks about a specific period of time</p> <p>13 which that 20 year would be as elected and thereafter for</p> <p>14 the remaining lifetime of the payee.</p> <p>15 BY MR. LeBLANC:</p> <p>16 Q Okay. Would you agree with me at the time the</p> <p>17 application was made that no contract existed?</p> <p>18 MR. O'DRISCOLL: Object to the form. When you</p> <p>19 say "at the time the application was made," that's not</p> <p>20 clear to me; but if the witness can answer it.</p> <p>21 MR. LeBLANC: To the extent that I can</p> <p>22 understand the question and can answer it, there was a --</p> <p>23 the actual -- my reading of the material suggested that</p> <p>24 there in fact hadn't been a -- there had been a meeting</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 255</p> <p>1 MR. O'DRISCOLL: Well, to the extent that you</p> <p>2 can answer.</p> <p>3 THE WITNESS: To the extent that I can answer</p> <p>4 this is that the certain signifies a specified period.</p> <p>5 BY MR. LeBLANC:</p> <p>6 Q And what on the application in Exhibit 3 is the</p> <p>7 specified period?</p> <p>8 A In the handwritten document are you speaking of</p> <p>9 in section 14?</p> <p>10 Q I'm speaking of Exhibit 3, what is the certain</p> <p>11 period represented in that application?</p> <p>12 A The application in section 14 is handwritten</p> <p>13 immediate annuity 20 year certain, 3 percent interest,</p> <p>14 175,000, I think that's an equal sign, 1,450.45 per</p> <p>15 month, and I cannot decipher what that last portion is.</p> <p>16 Q But the 20 year certain annuity is being</p> <p>17 applied for per the terms of this application; isn't that</p> <p>18 correct?</p> <p>19 MR. O'DRISCOLL: Object to the form of the</p> <p>20 question. Are you asking now in conjunction with the</p> <p>21 rest of the contract?</p> <p>22 MR. LeBLANC: I'm asking in the annuity</p> <p>23 application, the document that Mr. -- that we marked as</p> <p>24 Exhibit 3 and Mr. Mensie I hope has in front of him says</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 257</p> <p>1 of the minds with respect to --</p> <p>2 BY MR. LeBLANC:</p> <p>3 Q Mr. Mensie, that's not what I asked you.</p> <p>4 MR. O'DRISCOLL: The witness is trying to</p> <p>5 answer the question.</p> <p>6 MR. LeBLANC: The witness is answering his own</p> <p>7 question.</p> <p>8 BY MR. LeBLANC:</p> <p>9 Q The question is: Did a contract exist as of</p> <p>10 the time this application was made?</p> <p>11 MR. O'DRISCOLL: Between what parties?</p> <p>12 MR. LeBLANC: An annuity contract.</p> <p>13 MR. O'DRISCOLL: Well, I'll object on a few</p> <p>14 grounds. First of all, you're asking Mr. Mensie for a</p> <p>15 legal opinion, and he's testifying here as a fact witness</p> <p>16 as Kemper's representative.</p> <p>17 MR. LeBLANC: I'm asking him if factually a</p> <p>18 contract existed as of the time the application was</p> <p>19 submitted.</p> <p>20 MR. O'DRISCOLL: Well, you know, I would</p> <p>21 continue in my objection. The existence of a contract</p> <p>22 and when exactly it exists is the subject of case law,</p> <p>23 not for Mr. Mensie's testimony.</p> <p>24 BY MR. LeBLANC:</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 258</p> <p>1 Q Mr. Mensie, could you answer the question, 2 please.</p> <p>3 A From my review of the file it seemed to me that 4 the parties thought that a contract did in fact exist at 5 the time. There was an agreement of the parties. There 6 was an exchange of money, and there was a document 7 produced representing that agreement of the minds.</p> <p>8 Q Mr. Mensie, in your experience in the insurance 9 and annuity industry is it the case that an annuity 10 contract is issued and that it is applied for, or is it 11 the other way around?</p> <p>12 A The issuance of a contract comes much later in 13 the process.</p> <p>14 Q So the process is an application is submitted; 15 is that true?</p> <p>16 A The process is that a quote is rendered 17 representing what it would cost to purchase the vehicle, 18 the check is drawn to reflect that quote, the money and 19 the application are submitted, and then the policy is 20 issued.</p> <p>21 Q Okay. So the application comes first, then the 22 policy; is that true?</p> <p>23 MR. O'DRISCOLL: Mr. Mensie just testified that 24 after the application is submitted, the policy is issued. PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 260</p> <p>1 the policy is issued; is that true?</p> <p>2 MR. O'DRISCOLL: He just testified what came 3 first and second and third and fourth. He went through 4 the whole process.</p> <p>5 BY MR. LeBLANC:</p> <p>6 Q Mr. Mensie, there's a question before you. Is 7 it true the application comes first, then the policy is 8 issued, yes or no?</p> <p>9 A As far as I know the process is as I've 10 reflected, and once again I'll state it for the record 11 that the quote comes first.</p> <p>12 Q What's that?</p> <p>13 A The quote comes first.</p> <p>14 Q Relative just with reference to the application 15 and the policy, which of those documents comes first?</p> <p>16 MR. O'DRISCOLL: The application and the 17 policy, is that your question?</p> <p>18 BY MR. LeBLANC:</p> <p>19 Q With reference to only the application and the 20 policy, which comes first?</p> <p>21 MR. O'DRISCOLL: The policy issuance, is that 22 what you're talking about?</p> <p>23 BY MR. LeBLANC:</p> <p>24 Q Mr. Mensie? PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 259</p> <p>1 MR. LeBLANC: Well, let's have the witness 2 testify as to that then.</p> <p>3 MR. O'DRISCOLL: He just did.</p> <p>4 BY MR. LeBLANC:</p> <p>5 Q Is that true, Mr. Mensie?</p> <p>6 THE WITNESS: Can you read back my response?</p> <p>7 MR. O'DRISCOLL: Yes.</p> <p>8 MR. LeBLANC: Let's read back the question 9 first and see if Mr. Mensie can answer the question.</p> <p>10 MR. O'DRISCOLL: It's been asked and answered, 11 but...</p> <p>12 MR. LeBLANC: Joanne, could you read back the 13 question, please.</p> <p>14 (Record read as follows: So the 15 application comes first, then the 16 policy; is that true?)</p> <p>17 MR. O'DRISCOLL: That's what he just testified 18 to.</p> <p>19 Actually, strike that. He testified as to 20 the entire process, and that included the answer to your 21 last question.</p> <p>22 BY MR. LeBLANC:</p> <p>23 Q Okay. And the question still stands: Is it 24 true, Mr. Mensie, the application comes first and then PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 261</p> <p>1 A Yeah, that's the confusion because, you know, 2 the life company -- the issuance of the policy is the 3 final process. So in the sequence of whatever their 4 orders might be in terms of what they require, you know, 5 I can't necessarily speak to that; but the first process 6 is the quote.</p> <p>7 Q Okay. Mr. Mensie, does the application predate 8 the issuance of the policy?</p> <p>9 A In most times, yes.</p> <p>10 Q Thank you. You testified earlier when 11 discussing Exhibit 5 that Kemper did not know who Charter 12 was at the time. Are you saying as of 4-18-1983 Kemper 13 did not know who Charter was?</p> <p>14 MR. O'DRISCOLL: Objection to the form of the 15 question. It's a compound question. Would you like me 16 to get Exhibit 5 for the witness so that he may review 17 it?</p> <p>18 MR. LeBLANC: He doesn't need to review it. 19 That was his testimony regarding the exhibit. I'm just 20 asking him is it his testimony as of 4-18-1983 that 21 Kemper did not know who Charter was.</p> <p>22 THE WITNESS: Thank you for giving me an 23 opportunity to clarify that statement. I didn't realize 24 that it came out that way. PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 262</p> <p>1 BY MR. LeBLANC:</p> <p>2 Q Do you want to change your testimony now</p> <p>3 regarding that statement?</p> <p>4 A Well, I want to be able to explain it if you</p> <p>5 interpreted what I'm saying to suggest that no one at</p> <p>6 Kemper knew who Charter was. I cannot speak to that. I</p> <p>7 was speaking to the document that was before me and my</p> <p>8 reading of what he was suggesting.</p> <p>9 That is not to say that even Mr. Noe</p> <p>10 personally did not know who Charter was at the time. It</p> <p>11 was my reading of a document and impression that I got is</p> <p>12 that they had not done business with each other, or that</p> <p>13 was my impression of it, and that doesn't necessarily</p> <p>14 mean that that was so either; but that was simply my</p> <p>15 impression of the reading of that document.</p> <p>16 Q And you're testifying today as the</p> <p>17 representative of Kemper; you understand that, right?</p> <p>18 A I do understand that.</p> <p>19 Q Can you refer to Exhibit 2, please.</p> <p>20 MR. O'DRISCOLL: Mr. Mensie has Exhibit 2 in</p> <p>21 front of him.</p> <p>22 BY MR. LeBLANC:</p> <p>23 Q Box 12 where Mr. Keane asked some questions</p> <p>24 will this annuity replace or change any existing life</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 264</p> <p>1 by Mr. Noe, was there an existing annuity contract issued</p> <p>2 by Charter Security owned by American Motorists with</p> <p>3 Mr. Dimon being the beneficiary?</p> <p>4 MR. O'DRISCOLL: Objection to the form of the</p> <p>5 question because it's compound. There are a number of</p> <p>6 questions contained within your question.</p> <p>7 BY MR. LeBLANC:</p> <p>8 Q Mr. Mensie, you can answer if you understand.</p> <p>9 A I do, but I don't have the date that they</p> <p>10 actually issued the policy.</p> <p>11 Q We just went over what the process was and what</p> <p>12 the steps were, right?</p> <p>13 A In general, but actually you have a specific</p> <p>14 record here.</p> <p>15 Q Right. So we have a document signed by Mr.</p> <p>16 Noe, Exhibit 2 and Exhibit 3?</p> <p>17 A That's correct. Well, I have the exhibits</p> <p>18 before me, Exhibit 2 and Exhibit 3. Whether or not</p> <p>19 Exhibit 3 was signed by Mr. Noe, I don't think I've</p> <p>20 testified to that.</p> <p>21 Q I believe you did yesterday, and are you now</p> <p>22 saying that Exhibit 3 is not signed by Mr. Noe?</p> <p>23 A I'm saying I cannot read that signature line on</p> <p>24 Exhibit 3.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 263</p> <p>1 insurance or annuity contract, and it was checked no.</p> <p>2 MR. O'DRISCOLL: This is Exhibit 2? You're</p> <p>3 asking about Exhibit 2, now, Peter? I'm sorry.</p> <p>4 MR. LeBLANC: Exhibit 2, box 12.</p> <p>5 THE WITNESS: Got it.</p> <p>6 BY MR. LeBLANC:</p> <p>7 Q He asked a question about no being checked in</p> <p>8 box 12, do you recall that question or that line of</p> <p>9 questions?</p> <p>10 A Yes.</p> <p>11 Q Okay. And then he also asked a question if you</p> <p>12 look at Exhibit 3, again the same box no -- no box is</p> <p>13 checked to the question will this annuity replace or</p> <p>14 change any existing insurance or annuity contract?</p> <p>15 MR. O'DRISCOLL: I'm handing the witness</p> <p>16 Exhibit 3.</p> <p>17 THE WITNESS: Yes.</p> <p>18 BY MR. LeBLANC:</p> <p>19 Q Mr. Mensie, why don't you have Exhibit 2 and</p> <p>20 Exhibit 3 in front of you because Exhibit 2 is easier to</p> <p>21 read.</p> <p>22 MR. O'DRISCOLL: He does.</p> <p>23 BY MR. LeBLANC:</p> <p>24 Q At the time that this application was submitted</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 265</p> <p>1 Q Okay. Well, I'll rely on your testimony from</p> <p>2 yesterday. Is it Kemper's position today as we speak</p> <p>3 that there was an existing life insurance or annuity</p> <p>4 contract when box -- when the no box was checked in box</p> <p>5 12 of the application?</p> <p>6 A On which Exhibit?</p> <p>7 Q On Exhibit 2, Exhibit 3, Exhibit 4, any of the</p> <p>8 copies of the application.</p> <p>9 MR. O'DRISCOLL: Exhibit 4?</p> <p>10 MR. LeBLANC: Exhibit 4 is a very poor copy of</p> <p>11 Exhibit 3 that was submitted in the claim file that we</p> <p>12 received recently or the partial claim file that we</p> <p>13 received recently.</p> <p>14 THE WITNESS: Well, as best I understand your</p> <p>15 question, because these exhibits obviously took place at</p> <p>16 different time frames, Exhibit 2, the box is checked no;</p> <p>17 but between the time of Exhibit 2 and Exhibit 3 which you</p> <p>18 actually have a date on, May of '83, if the policy</p> <p>19 wasn't -- there may very well have been a policy issued</p> <p>20 between those times.</p> <p>21 BY MR. LeBLANC:</p> <p>22 Q Do you have any evidence that there was a</p> <p>23 policy issued prior to May of 1983?</p> <p>24 MR. O'DRISCOLL: The witness didn't testify</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 266</p> <p>1 that prior to May of 1983 that there was an --</p> <p>2 MR. LeBLANC: He said there may have been a</p> <p>3 policy issued between the time Mr. Noe signed it and the</p> <p>4 date on Exhibit 3. I want to know does the witness have</p> <p>5 any evidence at all that there was a policy issued prior</p> <p>6 to May of 1983.</p> <p>7 THE WITNESS: As best I can recall, the policy</p> <p>8 that was issued contained language that was different</p> <p>9 than that language that you now see on Exhibit 3.</p> <p>10 BY MR. LeBLANC:</p> <p>11 Q Is Exhibit 3 a policy, Mr. Mensie?</p> <p>12 A No. It's an application.</p> <p>13 Q Okay. I'm asking was a policy issued prior to</p> <p>14 May of 1983? Do you have any evidence of that?</p> <p>15 A The evidence that I would suggest that would --</p> <p>16 that may have been existent would be the policy itself</p> <p>17 that shows terms that are different than those terms that</p> <p>18 Exhibit 3 purports to represent.</p> <p>19 Q Mr. Mensie, in your experience in the insurance</p> <p>20 and annuity industry is an application a contract?</p> <p>21 A Not in my experience, not by itself.</p> <p>22 Q Is an application a policy?</p> <p>23 A Not -- my experience is not by itself. It</p> <p>24 doesn't stand alone.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 268</p> <p>1 vacuum of what the contract language says and what the</p> <p>2 prior agreement of the parties are?</p> <p>3 MR. LeBLANC: My question is asked as it's</p> <p>4 asked. If Mr. Mensie can answer, then he can answer.</p> <p>5 MR. O'DRISCOLL: He's already testified to that</p> <p>6 as regards to this case; but, Mr. Mensie, you can answer</p> <p>7 to the extent that you --</p> <p>8 THE WITNESS: I'm not really sure what that</p> <p>9 process would be. If the application -- if they're</p> <p>10 applying for -- if they're making application for</p> <p>11 something, should the policy reflect what the application</p> <p>12 says; is that your question?</p> <p>13 MR. LeBLANC: My question can be read back by</p> <p>14 the court reporter if you would like.</p> <p>15 (Record read as follows: So if the</p> <p>16 application says 20 year certain, the</p> <p>17 policy should say 20 year certain;</p> <p>18 isn't that true?)</p> <p>19 THE WITNESS: I'm really not sure how to answer</p> <p>20 that question because I mean if the -- if the</p> <p>21 application -- my understanding at least of the question,</p> <p>22 if the application represents a -- no, you know, actually</p> <p>23 if the application represents something that the carrier</p> <p>24 does not want to do, they should -- they could reject the</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 267</p> <p>1 Q Okay. Now, if an individual submits an</p> <p>2 application, the insurer or the company that's to issue</p> <p>3 the policy, are they free to do anything they want with</p> <p>4 the terms of the policy after the application was</p> <p>5 submitted?</p> <p>6 A I think that it's spelled out in their</p> <p>7 agreement what they can do as respects to an application.</p> <p>8 Q Okay. So if the application says 20 year</p> <p>9 certain, the policy should say 20 year certain; isn't</p> <p>10 that true?</p> <p>11 MR. O'DRISCOLL: Objection to the form of the</p> <p>12 question.</p> <p>13 BY MR. LeBLANC:</p> <p>14 Q Mr. Mensie, if you can answer.</p> <p>15 A You're asking me if a party submits an</p> <p>16 application that contains -- I'm sorry. Could you ask</p> <p>17 the question again.</p> <p>18 MR. LeBLANC: Let's have the question read back</p> <p>19 by the court reporter, please.</p> <p>20 (Record read as follows: So if the</p> <p>21 application says 20 year certain, the</p> <p>22 policy should say 20 year certain;</p> <p>23 isn't that true?)</p> <p>24 MR. O'DRISCOLL: Is your question asked in a</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 269</p> <p>1 application.</p> <p>2 Q That really doesn't answer the question though.</p> <p>3 A If I understood, you asked the question if the</p> <p>4 application represented something to the carrier 20 year</p> <p>5 certain, should the policy be issued for 20 year certain;</p> <p>6 and my answer to that is not necessarily if the carrier</p> <p>7 doesn't want to accept the application as it's written.</p> <p>8 It doesn't have to always issue it as it's written. It</p> <p>9 could reject the application.</p> <p>10 Q Okay. But if it doesn't reject the application</p> <p>11 and actually issues a policy, shouldn't the policy</p> <p>12 reflect what was applied for?</p> <p>13 A Then that would be the same thing as -- well,</p> <p>14 if the application spelled the name wrong, the policy</p> <p>15 should be issued with the wrong name?</p> <p>16 Q That's not the question.</p> <p>17 A Well, I'm not sure I understand the question.</p> <p>18 Q Okay. If an application is submitted that</p> <p>19 requests a 20 year certain immediate annuity, shouldn't</p> <p>20 the policy that was issued only be a 20 year certain</p> <p>21 immediate annuity if the company doesn't reject the</p> <p>22 application?</p> <p>23 MR. O'DRISCOLL: I'm going to object to the</p> <p>24 form of the question.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 270</p> <p>1 MR. LeBLANC: Come on.</p> <p>2 MR. O'DRISCOLL: You're assuming facts not in</p> <p>3 evidence for one thing.</p> <p>4 MR. LeBLANC: How so?</p> <p>5 MR. O'DRISCOLL: Well, the application that was</p> <p>6 submitted here, Exhibit 2, doesn't say anything about 20</p> <p>7 year certain in the first place.</p> <p>8 MR. LeBLANC: Exhibit 3 says 20 year certain.</p> <p>9 That's the application that was submitted.</p> <p>10 MR. O'DRISCOLL: That's not what the witness</p> <p>11 testified to.</p> <p>12 MR. LeBLANC: The witness can't testify as to</p> <p>13 what application was submitted because he wasn't there in</p> <p>14 1983.</p> <p>15 BY MR. LeBLANC:</p> <p>16 Q Isn't that true, Mr. Mensie, as Mr. DeWick</p> <p>17 asked, you weren't present in 1983?</p> <p>18 A That's correct.</p> <p>19 Q So you have no idea what was submitted and what</p> <p>20 wasn't?</p> <p>21 A Only from the review of the record.</p> <p>22 Q Okay. So if an application is submitted that</p> <p>23 says special request immediate annuity 20 year certain,</p> <p>24 if the application isn't rejected by the company, that's</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 272</p> <p>1 circumstances?</p> <p>2 MR. LeBLANC: Under the circumstances</p> <p>3 Mr. Mensie just described.</p> <p>4 THE WITNESS: My involvement where I have a</p> <p>5 settlement and I'm going to issue a settlement document,</p> <p>6 if that settlement document does not reflect the</p> <p>7 understanding that the parties have, then we get the</p> <p>8 settlement document worked out. So I would not issue a</p> <p>9 settlement agreement without having everyone who was to</p> <p>10 honor that agreement involved in -- for example, in this</p> <p>11 application you've got handwritten notes, but you've got</p> <p>12 no one having stenciled them, no one having initialed</p> <p>13 them to signify that there was any agreement on these</p> <p>14 parts.</p> <p>15 BY MR. LeBLANC:</p> <p>16 Q Mr. Mensie, is the claim file kept in any</p> <p>17 particular order?</p> <p>18 A Claim files are usually kept in reverse</p> <p>19 chronological order, yes.</p> <p>20 Q So documents received first go in the back and</p> <p>21 they move forward from there?</p> <p>22 A Correct.</p> <p>23 Q And do you know if the documents that represent</p> <p>24 a partial claim file from Kemper that were disclosed and</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 271</p> <p>1 the policy that should issue; isn't that true?</p> <p>2 MR. O'DRISCOLL: Object to the form of the</p> <p>3 question. It's a complete hypothetical because there's</p> <p>4 been no evidence that that's what happened here, but the</p> <p>5 witness can answer the question to the extent he</p> <p>6 understands it.</p> <p>7 THE WITNESS: To the extent of my</p> <p>8 understanding, if the application is submitted, the</p> <p>9 policy would be issued to comply with what was requested</p> <p>10 if that's what the agreements were.</p> <p>11 BY MR. LeBLANC:</p> <p>12 Q Okay. And that's only to the extent -- and</p> <p>13 what do you mean by if that's what the agreements were?</p> <p>14 A If you have -- if the application is somehow --</p> <p>15 doesn't reflect what the agreements were, then I think</p> <p>16 the obligation becomes together make sure they have a</p> <p>17 meeting of the minds before the policy is issued. I</p> <p>18 don't think one party can just unilaterally modify the</p> <p>19 application and then assume that that's -- a policy</p> <p>20 should be issued that way.</p> <p>21 Q Is that what Kemper would do? Would they come</p> <p>22 together and make sure there was a meeting of the minds?</p> <p>23 MR. O'DRISCOLL: Object to the form of the</p> <p>24 question. Is that what Kemper would do under what</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 273</p> <p>1 marked by your attorney continue that reverse</p> <p>2 chronological order organization?</p> <p>3 A The documents disclosed in March would not have</p> <p>4 been the claim file.</p> <p>5 Q The documents disclosed this week.</p> <p>6 A Oh. To the extent --</p> <p>7 MR. O'DRISCOLL: If you know.</p> <p>8 THE WITNESS: I don't know what, you know,</p> <p>9 this -- how counsel disclosed the information, but to the</p> <p>10 extent that the claim file remained organized in the</p> <p>11 method that is prescribed, then the documents would be in</p> <p>12 reverse chronological order.</p> <p>13 BY MR. LeBLANC:</p> <p>14 Q Okay. Do you know for a fact that they are in</p> <p>15 reverse chronological order or are not in reverse</p> <p>16 chronological order?</p> <p>17 A When I reviewed the file, for the most part</p> <p>18 they were. I did find documents that did not appear in</p> <p>19 date sequence reverse chronological order. Again this</p> <p>20 dates back to 1983, so it was -- they were commingled</p> <p>21 within the documents.</p> <p>22 Q They were commingled when you received the</p> <p>23 claim file?</p> <p>24 A That's correct.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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<p style="text-align: right;">Page 274</p> <p>1 Q You sent it to your attorney?</p> <p>2 A I sent it to my attorney in the form that I</p> <p>3 received it, and there were documents within that review,</p> <p>4 within my initial review, that were not in date sequence</p> <p>5 order.</p> <p>6 Q Do you recall what those documents were?</p> <p>7 A No, I do not.</p> <p>8 MR. LeBLANC: I have no further questions;</p> <p>9 although I am reserving the right to suspend.</p> <p>10 MR. O'DRISCOLL: I have no questions. Does</p> <p>11 anyone else?</p> <p>12 MS. McQUAY: No.</p> <p>13 MR. DeWICK: I have one actually. This is Jed</p> <p>14 DeWick.</p> <p>15 RE CROSS EXAMINATION</p> <p>16 BY MR. DeWICK:</p> <p>17 Q Mr. Mensie, back to Exhibit 3 where it</p> <p>18 indicates about 14 immediate annuity, 20 year certain?</p> <p>19 A Yes, sir.</p> <p>20 Q You referenced a document earlier that was --</p> <p>21 you testified was part of the annuity contract and that</p> <p>22 that's Bates labeled K-0015.</p> <p>23 MR. O'DRISCOLL: I'm going to hand that to the</p> <p>24 witness if that's okay.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 276</p> <p>1 FURTHER REDIRECT EXAMINATION</p> <p>2 BY MR. LeBLANC:</p> <p>3 Q Mr. Mensie, box 14 of Exhibit 3, does the term</p> <p>4 "the certain period" appear anywhere in box 14?</p> <p>5 MR. O'DRISCOLL: Box 14 of Exhibit 3.</p> <p>6 THE WITNESS: In Exhibit 3 it reads: Immediate</p> <p>7 annuity, 20 year certain.</p> <p>8 BY MR. LeBLANC:</p> <p>9 Q But not the certain period?</p> <p>10 A It does not read the certain period.</p> <p>11 Q Okay. So you're making the leap of faith</p> <p>12 between box 14 and K-0015 that the certain period and</p> <p>13 certain mean the same thing; isn't that true?</p> <p>14 MR. O'DRISCOLL: Objection to the form. You</p> <p>15 may answer.</p> <p>16 THE WITNESS: No. My leap was actually my</p> <p>17 recollection of what -- how it read in Exhibit K-0015,</p> <p>18 it's in parentheses the certain period. So the person</p> <p>19 authoring box 14 may have been classifying the certain</p> <p>20 period to be reflective of what the actual contract says,</p> <p>21 so it was actually the reverse. I was going from the</p> <p>22 contract itself by what was being asked of me earlier</p> <p>23 trying to define what they were suggesting here in box</p> <p>24 14.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>
<p style="text-align: right;">Page 275</p> <p>1 MR. DeWICK: Yes, please, hand both of them if</p> <p>2 you will, Exhibit 3 as well as that page.</p> <p>3 THE WITNESS: Oh, yes.</p> <p>4 BY MR. DeWICK:</p> <p>5 Q Just so we're clear here, the portion on Bates</p> <p>6 labeled K-0015 indicates option 2, life annuity. Do you</p> <p>7 see that?</p> <p>8 A Yes.</p> <p>9 Q And then in the next column it says with</p> <p>10 certain period, and it describes what with certain period</p> <p>11 means?</p> <p>12 A Yes.</p> <p>13 Q And then we see on box 14 of Exhibit 3 that it</p> <p>14 indicates in the special request box immediate annuity,</p> <p>15 20 year certain?</p> <p>16 A That's correct.</p> <p>17 Q Referencing those two documents, is it fair to</p> <p>18 say that this application is applying for a life annuity</p> <p>19 with a 20 year certain period?</p> <p>20 A It appears to be so, yes.</p> <p>21 MR. DeWICK: I don't have anything further.</p> <p>22 Thank you.</p> <p>23 MR. O'DRISCOLL: Anyone else?</p> <p>24 MR. LeBLANC: I do.</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>	<p style="text-align: right;">Page 277</p> <p>1 BY MR. LeBLANC:</p> <p>2 Q Okay. And you would agree with me that the day</p> <p>3 is --</p> <p>4 A Whoever the author was of this handwritten</p> <p>5 document.</p> <p>6 Q The day you're referring to is someone from</p> <p>7 1983, right?</p> <p>8 A This document was -- appears that this dates</p> <p>9 back to 1983, yes.</p> <p>10 Q And you don't know who wrote that?</p> <p>11 MR. O'DRISCOLL: Who wrote what?</p> <p>12 MR. LeBLANC: Who wrote certain in box 14.</p> <p>13 THE WITNESS: I do not know the identity of the</p> <p>14 author of what appears in the special remarks section.</p> <p>15 BY MR. LeBLANC:</p> <p>16 Q Okay. When you say "special remarks," do you</p> <p>17 mean special requests?</p> <p>18 A I'm sorry. Special requests, yes.</p> <p>19 Q So you're speculating as to what they may have</p> <p>20 been thinking but have no basis of knowledge for that;</p> <p>21 isn't that true?</p> <p>22 A My knowledge is only based upon my</p> <p>23 interpretation of what it says.</p> <p>24 Q Okay. But you testified earlier that the</p> <p style="text-align: center;">PRECISE REPORTING SERVICE, P.C.</p>

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1 application predates or comes prior to the issuance of	1 I have read the foregoing transcript of my
2 the policy. Do you recall that?	2 deposition taken on September 7 and 8, 2006, and
3 MR. O'DRISCOLL: Object to the form. I believe	3 It is a true and correct transcript of my
4 the record will show the witness testified that the	3 deposition given on the day and date aforesaid.
5 submission of the original application does come before	4 (or)
6 the policy. You may answer, Mr. Mensie.	4 I wish to make the following changes to my
7 THE WITNESS: To the extent I understand the	4 deposition:
8 question, my testimony earlier attempted to explain my	5 Page ___ Line ___ Change _____
9 understanding of the process. I did not mean to suggest	6 Reason _____
10 by any means that this particular application was	7 Page ___ Line ___ Change _____
11 submitted prior to the issuance of the policy.	8 Reason _____
12 MR. LeBLANC: I don't have any other questions	9 Page ___ Line ___ Change _____
13 at this time. Anyone else?	10 Reason _____
14 MR. DeWICK: No.	11 Page ___ Line ___ Change _____
15 MR. O'DRISCOLL: No.	12 Reason _____
16 MR. KEANE: No, I do not.	13 Page ___ Line ___ Change _____
17 MS. McQUAY: No.	14 Reason _____
18 MR. LeBLANC: Then we're going to suspend the	15 Page ___ Line ___ Change _____
19 deposition at this time and determine at a later date	16 Reason _____
20 whether we'll reconvene. Also we're suspending based on	17 _____
21 my statements yesterday and the partial disclosure of the	18 William R. Mensie
22 documents in the claim file.	19 Subscribed and sworn to
23 MR. O'DRISCOLL: And I will state for the	20 before me this ___ day
24 record that we do not agree to any -- Kemper does not	21 of ___, 2006.
PRECISE REPORTING SERVICE, P.C.	22 _____
	23 (Seal) Notary Public
	24 PRECISE REPORTING SERVICE, P.C.

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1 agree to any suspension of the deposition. There's been	1
2 no cause whatsoever shown for that, and that should	2 STATE OF ILLINOIS)
3 suffice.	3) SS.
4 MR. LeBLANC: Thank you all. Thank you, Mr.	4 COUNTY OF COOK)
5 Mensie.	5
6 THE REPORTER: Do you do signature?	6 I, JOANNE M. BROGAN, CSR, RPR, a notary
7 MR. O'DRISCOLL: Yes.	7 public in and for the County of Cook and State of
8 THE REPORTER: He needs to read?	8 Illinois, do hereby certify that WILLIAM R. MENSIE, was
9 MR. O'DRISCOLL: Yes.	9 by me first duly sworn to testify to the truth, the whole
10 MR. LeBLANC: Let's go off record but take care	10 truth, and nothing but the truth, and that the above
11 of some housekeeping issues, can we all agree to that?	11 deposition was recorded stenographically by me and
12 (Discussion held off the record.)	12 reduced to computer-aided transcription by me.
13 (Witness excused.)	13 I FURTHER CERTIFY that the foregoing
14	14 transcript of the said deposition is a true, correct, and
15	15 complete transcript of the testimony given by the said
16	16 witness at the time and place specified hereinbefore.
17	17 I FURTHER CERTIFY that I am not a
18	18 relative or employee or attorney or counsel of any of the
19	19 parties, nor a relative or employee of such attorney or
20	20 counsel, or financially interested directly or indirectly
21	21 in this action.
22	22
23	23
24	24

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1
2 I FURTHER CERTIFY that my certificate
3 annexed hereto applies to the original and typed
4 transcripts only, signed and certified transcripts only.
5 I assume no responsibility for the accuracy of any
6 reproduced copies not made under my control or direction.
7 IN WITNESS WHEREOF, I have hereunto set my
8 hand and affixed my seal of office at Chicago, Illinois,
9 this 28th day of September, 2006.

Certified Shorthand Reporter
Registered Professional Reporter
Notary Public, Cook County, Illinois
C.S.R. No. 084-002353

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Lumbermens Mutual Casualty Company • American Motorists Insurance Company
American Manufacturers Mutual Insurance Company • American Protection Insurance Company
Long Grove, IL 60049 • 312/540-2000

October 10, 1983

Mr. Robert Liguori, Counsel
Charter Security Life Insurance
Company (New York)
720 Fifth Avenue
New York, New York 10019



Dear Mr. Liguori:

DENNIS DIMON
CHARTER SECURITY POLICY: 83A08153
OUR FILE NO: 399 LM 106125-2


In reply to your September 26, 1983, Sections 14 and 15
of the application that I signed were blank. The entries
now appearing were filled in after I returned the signed
application.

The original annuity policy received was for a term of
240 months certain and life thereafter as ordered and
agreed upon between Mr. Hughes and Mr. Foley. Your agent,
Mr. Foley further confirmed this to me by telephone in
April, 1983. May I suggest you contact him to verify
this?

I intend to retain the original policy in our files and
consider it to be valid and enforceable.

Very truly yours,

AMERICAN MOTORISTS INSURANCE COMPANY


John L. Noe
Home Office Claim



JLN:ml

cc: Mr. Robert A. Foley
Dean Witter Reynolds, Inc.
One Boston Place
Boston, MA 02108

Mr. Roger Hughes
Latti Assoc., Attorneys
30-31 Union Wharf
Boston, MA 02109

cc: Ms. Barbara Boehm
Vice President
Policyowner Service Dept.
Charter Security Life
Insurance Co. (New York)
720 Fifth Avenue
New York, NY 10019

000029

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APPLICATION

CHARTER SECURITY LIFE INSURANCE COMPANY, NEW YORK, 720 FIFTH AVENUE, NEW YORK, N.Y. 10019

Name of Annuitant (please print) <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female Dennis J. Diamon		9. Type of Contract Single Premium Deferred Annuity
Date and Place of Birth 12/9/59 So. Kingstown, RI		10. Single Premium Amount \$ 175,000.
Residence (No., Street, City, State and Zip Code) Laurel Lane, West Kingston, RI 02892		11. Maturity Age <input type="checkbox"/> 65 <input type="checkbox"/> 70½ <input checked="" type="checkbox"/> Other: Immediate 6/15/83
Business Address (Include Name of Employer)		12. Will this annuity replace or change any existing life insurance or annuity contract? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If yes, give name of company, policy number, and plan of life insurance or annuity.)
3. Mail Notices to <input type="checkbox"/> Residence <input type="checkbox"/> Business <input type="checkbox"/> Owner		13. Is this contribution for a tax qualified plan? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If so, contract will be issued with a limitation on transferability to conform with IRS regulations. (Check appropriate box for type of qualified plan.) <input type="checkbox"/> I.R.A. Rollover <input type="checkbox"/> Corporate pension or profit sharing plan <input type="checkbox"/> T.S.A. Exchange <input type="checkbox"/> H.R. 10 Exchange <input type="checkbox"/> H.R. 10
4. Social Security No. 036-44-8733		
Owner (If other than Proposed Annuitant) Name: American Motorists Insurance Co. Relationship: Address: Social Security Tax Payer I.D. No. 36-0727430 <input type="checkbox"/> Contingent Owner		14. Special Requests
8. Beneficiary and Relationship Primary: Katherine I. Diamon Contingent: Jessica I. Diamon - Daughter Rebecca Lee Diamon - Daughter		15. Amendments and Corrections (For Home Office use only)



The undersigned represent(s), to the best of his (her) knowledge and belief, that the foregoing statements and answers are complete, true, and correctly recorded and agree(s) to be bound by all statements and answers made or to be made in this application. The undersigned further expressly agree(s) as follows:

1. This application and any policy issued in consequence thereof shall constitute the entire contract. No agent is authorized to make or modify contracts, to waive any of the Company's rights or requirements or to bind the Company by making or receiving any promise, representation or information, unless the same be in writing, submitted to the Company, and made a part of such policy.

2. Acceptance of any contract(s) issued on the basis of the application shall constitute a ratification and acceptance of any change, correction, addition or amendment noted by the "Company" in the "Amendments and Corrections" section above, except that in those jurisdictions where it is required any change in amount or benefits shall require a written consent by the Proposed Annuitant and by the Applicant if other than the Proposed Annuitant.

Signature of Annuitant _____

Applicant if other than Annuitant *X* AMERICAN MOTORISTS INSURANCE

By *John L. Mac* - HOME OFFICE CLAIM
Signature and Title

Dated at _____ this _____ day of _____ 19____

Agent Signature (1)

Code

Please Print Name of Agent (1)

Agent Signature (2)

Code

Please Print Name of Agent (2)

Please Print Name of General Agency

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83A08153

ANNUITY
LOCATION

CHARTER SECURITY LIFE INSURANCE COMPANY, NEW YORK, 720 FIFTH AVENUE, NEW YORK, N.Y.

Name of Annuitant (please print) ☒ Male ☐ Female

Dennis J. Dixon

9. Type of Contract Single Premium Deferred Annuity

10. Single Premium Amount \$175,000.

Date and Place of Birth

12/9/59 So. Kingstown, RI

11. Maturity Age ☐ 65 ☐ 70% ☐ Other: Immediate
6/15/83

Residence (No., Street, City, State and Zip Code)

Laurel Lane, West Kingstown, RI 02892

12. Will this annuity replace or change any existing life insurance or annuity contract? ☐ Yes ☒ No
If yes, give name of company, policy number, and plan of life insurance or annuity.

Business Address (include Name of Employer)

Mail Notices to ☐ Residence ☐ Business ☐ Owner

Social Security No. 036-44-8733

Owner (if other than Proposed Annuitant)

Name: American Motorists Insurance Co.

Relationship:

13. Is this contribution for a tax qualified plan? ☐ Yes ☒ No
If so, contract will be issued with a limitation on transferability to conform with IRS regulations. (Check appropriate box for type of qualified plan.)☐ IRA Rollover ☐ Corporate pension or profit sharing plan
☐ T.S.A. Exchange ☐ Terminal Funding
☐ H.R. 10 Exchange ☐ Other

Address:

Social Security Tax Payer I.D. No. 36-0727430

14. Special Requests Immediate Annuity
20yr. Contract - 3% interest
\$175,000 = 1450.45 per month
first payment☐ Contingent Owner

15. Amendments and Corrections (For Home Office use only)

Quote Number 50113

Beneficiary and Relationship

Primary: Katherine I. Dixon

Contingent: Jessica I. Dixon - Daughter
Rebecca Lea Dixon - Daughter

I, the undersigned, represent(s) to the best of his (her) knowledge and belief, that the foregoing statements and answers are complete, true, and correctly recorded and agree(s) to be bound by statements and answers made or to be made in this application.

The undersigned further expressly agree(s) as follows:

This application and any policy issued in consequence thereof shall constitute the entire contract. No agent is authorized to make or modify contracts, to waive any of the Company's rights or requirements or to bind the Company by giving or receiving any promises, representation or information, unless the same be in writing, submitted to the Company, and made a part of such policy.

2. Acceptance of any contract(s) issued on the basis of this application shall constitute a ratification and acceptance of any change, correction, addition or amendment noted by the Company in the "Amendments and Corrections" section of this application, except that in those jurisdictions where it is required by law, exchange in amount or benefits shall require a written consent by the Proposed Annuitant and by the Applicant if other than the Proposed Annuitant.

Signed at Springfield, MA this 4th day of May 1983

Signature of Annuitant Dennis J. Dixon

Agent Signature (1) [Signature] 621-61 Code

Applicant if other than Annuitant [Signature]

Please Print Name of Agent (1) E. [Signature]

By [Signature] Signature and Title

Agent Signature (2) [Signature] Code

Please Print Name of General Agency New York Life Insurance Company

Please Print Name of Agent on

000010



83AC8153

ANNUITY
APPLICATION

ARTER SECURITY LIFE INSURANCE COMPANY, NEW YORK, 720 FIFTH AVENUE, NEW YORK, N.Y. 10019

Annuitant (please print) <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female		9. Type of Contract Single Premium Deferred <u>Immediate</u> Annuity
Name J. DiLoria		10. Single Premium Amount \$ 175,000.
Date of Birth 9/59 So. Kingstown, RI		11. Maturity Age <input type="checkbox"/> 65 <input type="checkbox"/> 70½ <input checked="" type="checkbox"/> Other: <u>Immediate</u> 6/15/83
Address (No., Street, City, State and Zip Code) 111 E. Main, West Kingston, RI 02892		12. Will this annuity replace or change any existing life insurance or annuity contract? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If yes, give name of company, policy number, and plan of life insurance or annuity.)
Employer's Address (include Name of Employer)		
Type of Residence <input type="checkbox"/> Business <input checked="" type="checkbox"/> Owner		
Security No. (36-44-8733)		13. Is this contribution for a tax qualified plan? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If so, contract will be issued with a limitation on transferability to conform with IRS regulations. (Check appropriate box for type of qualified plan.) <input type="checkbox"/> I.R.A. Rollover <input type="checkbox"/> Corporate pension or profit sharing plan <input type="checkbox"/> T.S.A. Exchange <input type="checkbox"/> Terminal Funding <input type="checkbox"/> H.R. 10 Exchange <input type="checkbox"/> Other
Other than Proposed Annuitant		14. Special Requests <u>Immediate Annuity</u>
Security Tax Payment No. 21-07-17430		15. Amendments and Corrections (For Home Office use only)

tion, unless the same be in writing, submitted to the Company, and made a part of such policy.

2. Acceptance of any contract(s) issued on the basis of the application shall constitute a ratification and acceptance of any change, correction, addition or amendment noted by the "Company" in the "Amendments and Corrections" section above, except that in those jurisdictions where it is required any change in amount or benefits shall require a written consent by the Proposed Annuitant and by the Applicant if other than the Proposed Annuitant.

Signature of
Annuitant

Deanna T. DiLoria

Applicant if other
than Annuitant

X

By

Signature and Title

K-0021

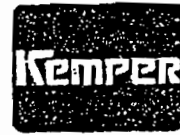
Exhibit

#4

9/15/06 JB

Please Print Name of Agent (1)

Mary Graci, Ocean Marine Claim, New York City
 T. J. Donohue, Tech. Claim, Long Grove, B-8
 John Kimberly, Tech. Claim, Long Grove, B-8
 R. W. Boncher, Tech. Claim, Long Grove, B-8



Date 4-18-83

To Klaus Lemhoefer, Div. Claim, Summit

From J. L. Noe, Tech. Claim, Long Grove, B-8

Previous
 Comm.

Regarding 399 LM 106125-Z
 DIMON VERSUS JENNY C., INC.



J. LaTORRE APR 21 1983

Assigned to negotiate settlement within our \$400,000 policy limit, I met with plaintiff's attorneys Hughes and Latti at Latti Associates, Boston, Massachusetts. Structured settlement negotiations were undertaken resulting in settlement at \$250,000 cash plus \$175,000 to be applied toward purchase of an annuity to provide plaintiff a monthly income for life, 20 years certain with 3% compounded annually added annually. Primary carrier Home Insurance will contribute the remainder of their policy limit toward the cash portion. They have not been billed for legal services and expense of their trial counsel. To date, they have paid \$1,340 maintenance, \$12,829.61 medical bills, \$4,032.95 legal and survey expense through mid-January for a total of \$18,202.56. After remaining legal expense is paid, they should be able to contribute approximately \$75,000 toward the settlement.

I conducted settlement negotiations on a basis of pay-outs and would not reveal our annuity costs. Plaintiff's attorney insisted that he be able to obtain competitive bidding. I presented four alternative offers, one of which was to provide \$1,100 per month for life, 20 years certain with 3% compounded annually added annually. Based on quotations from Mangelsdorf cost would be \$180,863. Plaintiff's attorney agreed that if I would pay \$175,000 and agree to be nominal owner of the annuity he would place it with an A rated life insurance company from whom he would be able to purchase \$1,450 per month for life, 20 years certain with 3% compounded annually added annually. I checked with two brokers and was unable to come anywhere near this pay-out for \$175,000 cost. After consultation with Mr. Boncher, we agreed with the condition that we will not guarantee payments and plaintiff will have no recourse against defendants or carriers in the event of default by the life insurance company. That company will be Charter Life Insurance Company.

Throughout I have been in consultation with New York City counsel John Moore, Providence, Rhode Island counsel W. Slater Allen and Home Insurance Claims Representative John Falvey of their North Haven, Connecticut office. Mr. Moore and Mr. Allen have consulted and guidelines established to protect our rights

Klaus Lemhoefer

4-18-83

-2-

to bring an action against Home Insurance after settlement should we so desire. Mr. Lemhoefer will ask Mr. Moore to give us a report assessing our chances. The case will be set for hearing on the settlement and certified notice of that hearing given to Home Insurance.

I will attend to various details necessary to bring this case to conclusion including signing the application for the annuity, arranging for payment of the premium and delivery of my copy of the claim file to Mr. Moore. Thereafter, I will close my interest without further report.

JLN:es

K-0103

Copy to

Mary Graci, Ocean Marine Claim, New York City
T. J. Donohue, Tech. Claim, Long Grove, B-8
John Kimberly, Tech. Claim, Long Grove, B-8
R. W. Boncher, Tech. Claim, Long Grove, B-8

KEMPER

Date 11-8-83

To Klaus Lemhoefer, Div. Claim, Summit

From J. L. Noe, Tech. Claim, Long Grove

Previous
Comm.

Regarding 399 LM 106125-Z
DIAMON V. JENNY C, INC.

RECEIVED
KEMPER GROUP

NOV 11 1983

OCEAN MARINE CLAIMS
NEW YORK

We have encountered some difficulty with Charter Security Life Insurance Company (New York) who issued the annuity policy. The settlement agreement was to establish a fully paid annuity contract for a sum plus 3% compounded annually, added annually to be paid during the term of a plaintiff's life and in no event for less than 20 years. Mr. Hughes, plaintiff's attorney, made the arrangement with broker Mr. Foley of Dean Witter Reynolds, Inc., Boston, Massachusetts and according to him, was quoted a premium of \$175,000 to meet that requirement. Mr. Foley and I had telephone communication in April 1983 at which time he confirmed what Mr. Hughes told me. The premium was paid, and the policy was issued and was correct. Thereafter, Charter Security declared that a mistake had been made and issued a replacement policy for a term of 20 years certain, only. I rejected it. Charter Security tried to persuade me that their position was correct, and again they issued a replacement policy declaring the original policy to be null and void. Again, I rejected it and declared the original policy to be valid and enforceable. In the meantime, Mr. Hughes threatened Mr. Foley with an errors and omissions claim, and Mr. Foley, on advice of counsel, has nothing further to say.

I am now dealing with Charter Security's counsel in Jacksonville, Florida, who has asked for a copy of the settlement agreement. I hope they will be persuaded to honor the original policy, and if additional premium must be paid, this will be arranged between Charter Security and Mr. Foley of Dean Witter Reynolds. If not, Mr. Hughes may file an action for declaratory judgment.

In the meantime, plaintiff is receiving his benefits and will continue to do so for at least the 20 year certain term. I think this will ultimately work out.

JLN:es

Mary Graci NOV 11 1983



K-0125

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Lumbermens Mutual Casualty Company • American Motorists Insurance Company
American Manufacturers Mutual Insurance Company • American Protection Insurance Company

Long Grove, IL 60049 • 312/540-2000

August 12, 1983

Mr. Robert A. Foley
Dean Witter Reynolds, Inc.
One Boston Place
Boston, Massachusetts 02108

Dear Mr. Foley:

DENNIS DIMON
CHARTER SECURITY POLICY NO: 83 A 08153
OUR FILE NO: 399 IM 106125-Z

I received the replacement policy issued by Charter Security Life Insurance Company (New York) changing the terms of the annuity from 240 months certain and life thereafter to 240 months certain only.

I am advised by Mr. Hughes of Lattie Associates that your quotation was to provide an annuity which would pay \$1,450.45 per month for the first year increasing annually at a rate of 3% compounded annually for 240 months certain and life thereafter for a single premium of \$175,000. This was the benefit to be provided under the terms of a general release and settlement agreement approved by Judge Pettine of the United States District Court for the District of Rhode Island.

The agreed upon premium was paid and a policy issued which is now in the files of the contract owner, American Motorists Insurance Company, providing benefits required by the release, settlement agreement and court order. I consider the original annuity contract valid and enforceable and will retain it in our files.



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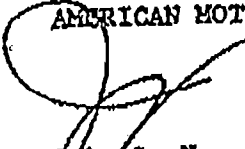
Mr. Robert A. Foley
August 12, 1983

-2-

I intended to return the replacement contract issued by
Barbara Boehm of Charter Security, but it was lost with
my briefcase on August 11, 1983.

Very truly yours,

AMERICAN MOTORISTS INSURANCE COMPANY


John L. Noe
Home Office Claim

JLN:bw

cc: Ms. Barbara Boehm
Vice President
Charter Security Life Insurance Company
(New York)
720 Fifth Avenue
New York City, New York 10019

Mr. Roger Hughes
Lattie Associates, Attorneys
30-31 Union Wharf
Boston, MA 02109

000026

JEROME B. SPUNT
ATTORNEY AT LAW
11 PARK ROW
PROVIDENCE, RHODE ISLAND 02903
(401) 274-4044

March 10, 1983

W. Slater Allen, Jr., Esq.
155 Westminster Street
Providence, Rhode Island 02903

Re: Dennis Dimon v. Jenny C., Inc.

Dear Mr. Allen:

On behalf of Jenny C., Inc., I want to write you formally as attorney for American Motorists Insurance Company (Kemper Group) to register my distress at the current status of the case and the failure of your company to make reasonable efforts to settle the matter within the policy limits. This is, in substance, what I said to you informally in our phone conversation yesterday.

As you know, plaintiff demanded \$90,000 before trial began, and by my letter of January 19, 1983 I put Home Indemnity Company on notice that I saw a risk of a verdict in excess of \$500,000 and that Home would be liable for breach of its duties to the insured in failing to compromise the case in the event of judgment over the policy limits. I understand that you gave Home similar notice.

We are now faced with a jury verdict of in excess of \$720,000. The assets of the corporation representing, substantially, the life savings of my clients, Gary Champlin and his father Leon F. Champlin, may well have to be taken to satisfy this judgment.

Joseph Flannery, plaintiff's counsel, has taken the position that "he does not want to bid against himself", and in the absence of a responsible indication of a willingness to negotiate on the part of defendant, has stuck to his original post-verdict settlement proposal which he first made to you on February 10, 1983, that is, that plaintiff would now be willing to accept \$600,000 prior to the hearing on limitation of liability. Jack Wells has advised me that Home Indemnity Company will now, of course, contribute the balance of its policy, and we would expect any proposal by your company to be conditioned on that.

You told me, when we talked yesterday, that neither Jack Wells nor Joe Flannery have put any proposals in writing, and you are not disposed to make any suggestions to your company until they do so. I implore you not to stand on ceremony. There is a realistic chance



K-0114

W. Slater Allen, Jr., Esq.

-2-

March 10, 1983

the case can be settled within the \$500,000 aggregate policy limits, and the \$600,000 demand by plaintiff should be regarded, realistically, only as his opening proposal, which has been left unresponded to for one month.

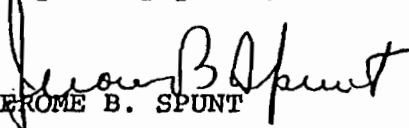
Your company, I believe, has an obligation to the insured to make responsible efforts to eliminate the risk of ultimate judgment being entered for \$720,000 or more. If you feel that others have made mistakes in the past, that is no reason to suspend efforts for a sensible solution at this time.

I feel, further, that your company has an obligation to affirmatively make a proposal, within the policy limits, for settlement at this time. It is more than likely that Mr. Flannery will respond with a demand within the policy limits.

We fully understand and appreciate the question that exists as between American Motorists and Home Indemnity as to Home's obligation to share in payment of amounts in excess of its policy limits, and Jack Wells advises, as you know, that this matter can be left open and would not be prejudiced in any way by your company's payment.

In my opinion, if your company does not alter its position as outlined above, it, in addition to Home Indemnity Company, will be liable to the insured for judgment in excess of the policy limits.

Very truly yours,


JEROME B. SPUNT

JBS:ilb

cc: Guy J. Wells, Esq.
Gary Champlin



**MEDWAY MARINE
CORPORATION**

OCEAN & INLAND MARINE INSURANCE

P.O. BOX 2385
PROVIDENCE, RHODE ISLAND 02906
TELEPHONE (401) 861 - 6800 - TELEGRAMS: SMITHINC
TELEX - 92 - 7751

March 10, 1983

W. Slater Allen, Esq.
Booth and Brodsky
515 Howard Building
Providence, RI 02903

RE: Fishing Vessel Jenny C

Dear Mr. Allen:

No Protection and Indemnity insurance in excess of the limit of liability in the American Motorists Insurance Company excess policy was in effect through this agency on the date of the accident in the case on which you are acting as counsel for the Kemper Insurance Group.

Yours very truly,

MEDWAY MARINE CORPORATION

Carleton I. Fisher
Vice President

CIF:rw



K-0116

A Subsidiary of Morton Smith, Inc.

GENERAL RELEASE

Dennis Jay Dimon, now or formerly of the Town of Charlestown, State of Rhode Island, in consideration of the payment of Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars and the establishment of a fully paid annuity contract for my benefit with Charter Life Insurance Company, to pay me One Thousand Four Hundred Fifty and No/100 (\$1,450.00) Dollars per month for one year following the execution of that contract and thereafter, such monthly sum increased at the rate of three (3%) percent per year, compounded annually, to be paid to me during the term of my life, and in no event for less than twenty (20) years, the receipt whereof is hereby acknowledged, do hereby remise, release, and quitclaim unto Jenny C. Inc. all and any such claims, rights, choses, and actions of every manner and kind which I have ever had, which I have now, or which I may have in the future from the beginning of the world to the date of these presents more specifically, without limiting the generality hereof all and every claim arising out of an injury suffered by me aboard the fishing vessel Jenny C. owned by Jenny C. Inc. on January 24, 1981, and all my rights, claims, and choses asserted or involved in the complaint or libel filed in the United States District Court for the District of Rhode Island under the name and style Dennis Jay Dimon vs. Jenny C. Inc., civil action No. 81-0063.



K-0063

I understand the nature and extent of my injury and that I will never be cured. I understand that this is a full and final settlement. I further certify that this release is fully understood by me and is entirely satisfactory.

IN WITNESS WHEREOF, Dennis Jay Dimon has set his hand this 19th day of April, 1983.

THIS IS A FINAL RELEASE.

Dennis Jay Dimon
Dennis Jay Dimon

On April 19, 1983 I read the above two pages to the plaintiff and explained its contents to him.

Roger E. Hughes
LATTI ASSOCIATES

NY



Charter Security Life Insurance Company (New York)
720 Fifth Avenue • New York, New York 10019

.075	14	7.49	19	5.97	24
9.83	15	7.10	20	5.75	25

OPTION 2. LIFE INCOME*

We will pay a lifetime monthly income to the Annuitant if living on the Annuity Date. The basis for this amount of income is explained in this contract.

Unless you make an alternate election, we will make the first monthly payment on the Annuity Date; payments after the first will be on that same date of the month as long as the Annuitant lives. Unless you make an alternate election, we guarantee 120 monthly payments; they will be continued to the Beneficiary if the Annuitant dies before receiving them. Payments will be made by check to the Annuitant or Beneficiary. We reserve the right to require proof that the payee is living on payment dates.

We will pay the benefit explained in this contract if the Annuitant dies before the Annuity Date. It will be paid to the Beneficiary when we receive acceptable proof of death.

The Beneficiary and Owner are as named in the application if not later changed.

Notice of ten-day right to examine contract: This contract may be cancelled within ten days after its receipt. The steps to follow are:

Return the contract with a written notice to us or to the agent through whom you purchased the contract. If you return the contract directly to us, use the address of our Home Office shown on the top of this page. If return is through the agent, obtain a receipt.

We will return all payments made for this contract after we receive it. As soon as the contract is delivered or mailed to us, it will be deemed void from its beginning.

Read this contract carefully. It is a legal contract between you and us.

Secretary

President

SINGLE PREMIUM DEFERRED ANNUITY

Monthly Life Annuity With Ten Years Certain Payable At Annuity Date
Benefit in Event of Death is Payable Prior To Annuity Date
Optional Life Annuities at Annuity Date—Optional Annuity Date
Non-Participating



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NY

DEFINITIONS

This is what we mean when we use these words or phrases:

"We," "us" and "our" refer to Charter Security Life Insurance Company (New York).

"You" and "yours" refer to the Owner named in the application.

The "Accumulation Interest Rate" is the annual effective interest rate which we use to credit interest to the Single Premium less any Partial Surrenders.

The "Accumulation Value" is the value of the contract before the charge, if any, for withdrawing funds.

The "Annuitant" is the person who is to receive annuity payments.

The "Beneficiary" receives the benefits, if any, due at the Annuitant's death.

A "Contingent Owner," if named, becomes the Owner if the Annuitant survives the Owner.

"Contract Years" are measured from the Issue Date.

The "Declared Interest Rate" is the Accumulation Interest Rate which we declare and guarantee for the Effective Period.

The "Effective Period" is the period during which the Accumulation Value will accrue interest at the Declared Interest Rate.

The "Owner" owns and controls this contract.

A "Partial Surrender" is a surrender of part of the Accumulation Value.

The "Surrender Charge" is the charge for withdrawing funds. It is equal to the Surrender Charge Percentage times the amount of Accumulation Value surrendered. The Surrender Charge Percentages are shown on the Schedule Page. Refer to NONFORFEITURE PROVISIONS; the Surrender Charge applies only under certain conditions.

The "Surrender Interest Rate" is the Declared Interest Rate below which the Surrender Charge is waived for 60 days. Refer to NONFORFEITURE PROVISIONS.

The Surrender Value" is the Accumulation Value less the Surrender Charge.

"Survive" refers to the continued life of a person or legal existence of an entity other than a person.

GENERAL PROVISIONS

BASIS OF CONTRACT: This contract is issued on the basis of the application and receipt of the Single Premium payment in advance.

ENTIRE CONTRACT; CHANGES: This contract, the attached application, and any endorsements make up the entire contract. All statements in the application are representations and not warranties.

No agent can change this contract or waive any of its terms. Changes can be made only by written endorsement signed by one of our officers.

PREMIUM PAYMENT: The Single Premium payment for this contract was paid in advance. If the check or other instrument is not honored for payment, this contract is deemed void from the beginning.

ISSUE DATE: This contract takes effect on its Issue Date which is shown on the Schedule Page.

INCONTESTABILITY: This contract is incontestable from its issue date.

MISSTATEMENT OF AGE OR SEX: We will require proof of age before we make payments to the Annuitant or any Beneficiary. If age or sex is misstated, we will pay the amount due at the true age or sex. In case of age or sex correction after payments start, we will:

- (1) In case of underpayment, pay the full amount due the payee with the next payment due.
- (2) In case of overpayment, deduct the amount due us from future payments; deductions will be spread over the payment period.

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GENERAL PROVISIONS

(Continued)

OWNERSHIP: You have all rights under this contract during the Annuitant's lifetime, subject to:

- (1) the rights of any assignee of record with us;
- (2) the rights of any irrevocable Beneficiary;
- (3) any restricted ownership endorsement;
- (4) the change of ownership provision.

CHANGE OF OWNERSHIP: During the Annuitant's lifetime, you may name a new Owner. If you are a natural person other than the Annuitant, you may name or change a Contingent Owner. A Contingent Owner becomes Owner only by surviving you.

Notice of the change must be sent to our Home Office; it must be signed and dated by you. We are not liable for any actions we take before we receive and file the notice at our Home Office.

Change of ownership:

- (1) voids any Contingent Ownership;
- (2) does not affect the Beneficiary.

ASSIGNMENT: You may assign all rights, privileges and benefits provided by this contract. We are not bound by an assignment until we receive and file a signed copy at our Home Office. We are not responsible for the validity of assignments.

BENEFICIARY: You may change the Beneficiary during the Annuitant's lifetime; an irrevocable Beneficiary may be changed only by that Beneficiary's written consent. Notice of the change must be sent to our Home Office; it must be signed and dated by you. It takes effect on the date it is signed. We are not liable for any actions we take before we receive and file the notice at our Home Office.

A Beneficiary's interest is effective if that Beneficiary:

- (1) survives the Annuitant by 15 days; or
- (2) survives until we receive proof of the Annuitant's death.

We will pay the proceeds in this order unless this contract is assigned at the time of the Annuitant's death:

- (1) We will pay the designated Beneficiaries who survive the Annuitant.
- (2) If no Beneficiary survives, we will pay the Annuitant's estate.

No Beneficiary can change your previous choice of a settlement option.

To the extent permitted by law, no payment we make will be subject to the claims of any creditors.

CONFORMANCE TO STATUTES: Any annuity, Surrender Value or benefit in event of death payable under this contract is not less than the minimum benefit required by any statute of the state in which this contract is delivered.

INTEREST RATES

DECLARED INTEREST RATE: We declare an Accumulation Interest Rate, and Effective Period, on the Issue Date. They are shown on the Schedule Page. Prior to the expiration of the Effective Period, we will declare a new Accumulation Interest Rate and Effective Period. We will notify you of declared Accumulation Interest Rates and effective periods in writing.

GUARANTEED INTEREST RATES: We guarantee that the Accumulation Interest Rates will be at least as great as the Guaranteed Interest Rates shown on the Schedule Page.

JOINT ANNUITANT

If you designate two persons as joint annuitants in the application, these rules will be in effect:

Definition: The term "Annuitant" means the joint annuitants or the survivor of them, as the case may be.

Annuity Date: The Annuity Date will be:

- (1) the Contract Anniversary following the 65th birthday of the older joint annuitant; or
- (2) ten years from the Issue Date if the issue age of the older joint annuitant is more than 55 Years; or
- (3) the date specified in the application.

Deferral of Annuity Date: The Annuity Date may not be deferred to a date beyond the 85th birthday of the older joint annuitant.

BENEFIT IN EVENT OF DEATH: We will not pay any benefit upon the death, before the Annuity Date, of the first of the joint annuitants to die. Instead, the contract will remain in force as to the surviving joint annuitant. If one joint annuitant dies before the Annuity Date, the latest permitted Annuity Date will become the 85th birthday of the remaining joint annuitant or, if later, ten years after the Issue Date. If both joint annuitants die before the Annuity Date, we will pay the benefit to the Beneficiary.

Separate annuities: At your request, we will apply the Accumulation Value to provide separate annuities for each joint annuitant, if both are living on the Annuity Date. You must make this request in writing at least 30 days before the Annuity Date. For this purpose, you must specify a division of the Accumulation Value into two portions. These portions may but need not be of equal size. You must specify the annuity option for each joint annuitant. You are not required to choose the same annuity option for both joint annuitants.

In addition to these three options, you may choose any other form of annuity agreed upon by us.

Except with our consent, settlement options will not be available to:

- (1) an assignee; or
- (2) any other than a natural person receiving proceeds in his or her own right

ACCUMULATION VALUE: The Accumulation Value at any time is the Single Premium you paid, less any Partial Surrenders and Surrender Charges, accumulated at the Accumulation Interest Rates.

CASH SURRENDERS: You may surrender all or part of the Accumulation Value before annuity payments begin.

We have a Surrender Charge in effect for the first seven years after the Issue Date, but only if:

- (1) there is more than one surrender within a Contract Year, or
- (2) the surrender exceeds the Allowable Portion of the Accumulation Value. The Allowable Portion is shown on the Schedule Page.

On the first surrender in a Contract Year, the Surrender Charge applies only to the amount in excess of the Allowable Portion of the Accumulation Value.

If an Accumulation Interest Rate is less than the Surrender Interest Rate, you may surrender this contract without a Surrender Charge provided you notify us within 60 days of the effective date of the Accumulation Interest Rate. After 60 days, any Surrender Charge in effect will be reinstated. However, you will not forfeit your right to surrender this contract without a Surrender Charge should a future Accumulation Interest Rate be below the Surrender Interest Rate.

If you surrender the entire Accumulation Value, the amount we pay you, added to any prior amounts we paid you for Partial Surrenders, will not be less than the Single Premium you paid us.

We may defer payment of cash surrenders for not more than six months.

BENEFIT IN EVENT OF DEATH: We will pay the Accumulation Value to the Beneficiary if:

- (1) the Annuitant dies before the Annuity Date; and
- (2) you have not specified a settlement option.

The amount paid will be the Accumulation Value as of the date of death accumulated at the Accumulation Interest Rate to the date of payment by us. It will be paid when we receive acceptable proof of death. No Surrender Charge will apply.

ANNUAL STATEMENT OF VALUES: As of each contract anniversary on or before the Annuity Date, we will send you a statement which shows the:

- (1) Accumulation Value; and

- (2) Surrender Value; and

- (3) Monthly life annuity with ten years certain which can be provided on the Annuity Date by the current Accumulation Value; and

- (4) Declared Interest Rate.

NORMAL SETTLEMENT; ANNUITY DATE: The Accumulation Value will be used to provide a life annuity as shown on the Schedule Page if:

- (1) the Annuitant is living on the Annuity Date; and
- (2) you have not made an alternate election.

The Annuity Date will be:

- (1) the contract anniversary following the Annuitant's 65th birthday; or
- (2) ten years from the Issue Date if the Issue Age is more than 55 years; or
- (3) the date specified in the application.

CHANGE IN ANNUITY OPTION OR DATE: You may defer the Annuity Date; deferral may not be to a date beyond the Annuitant's 85th birthday. After five years from the Issue Date, you may:

- (1) Advance the Annuity Date (but not to a date earlier than the date of the request); or
- (2) elect to begin payments under a settlement option.

Written request must be made:

- (1) during the Annuitant's lifetime;
- (2) at least 30 days before the Annuity Date; and
- (3) at least 30 days before any settlement option date.

BENEFITS PAYABLE TO BENEFICIARY: During the Annuitant's lifetime, you may choose a settlement option rather than a lump sum death benefit. The Beneficiary may make this choice after the Annuitant's death if:

- (1) you have not done so; and
- (2) payments have not begun.

MINIMUM PAYMENTS: We will not make periodic payments of less than \$20.00; for lesser amounts due, we will change the frequency of payments. This provision applies to payments we make to the Annuitant or to any Beneficiary.

SETTLEMENT OPTIONS

If you elect an annuity option by death, surrender or annuitization, the Accumulation Value of this contract may be applied under any of the options set forth below, provided that:

- (1) In the event of surrender, the option is elected on or prior to the surrender date.
- (2) In the event of death, the option is elected within 30 days of the date on which we notify the Beneficiary that proceeds are payable.

At the time payments under a settlement option begin, we will pay the greater of

- (1) the amount guaranteed under this contract; or
- (2) the amount that would be provided by the application of the Accumulation Value to purchase a single premium immediate annuity offered by us to the same class of annuitants, or
- (3) an amount determined by more favorable rates which we then offer.

OPTION 1, LIMITED PAYMENTS: Equal payments for a set time, not more than 30 years. Any excess interest we declare will be paid yearly.

OPTION 2, LIFE INCOME:
LIFE ANNUITY. Equal monthly payments as long as the payee lives.

WITH CERTAIN PERIOD. Equal monthly payments for five, ten, or twenty years (the certain period), as elected, and thereafter for the remaining lifetime of the payee.

WITH INSTALLMENT REFUND. Equal monthly payments until the sum of such payments equals the proceeds settled under this option (at which time the installment refund period ends) and thereafter for the remaining lifetime of the payee.

OPTION 3, JOINT LIFE INCOME WITH TWO-THIRDS TO SURVIVOR: Payment of equal monthly (or less frequent) installments during the joint lifetime of the payee and another person. After the death of either the payee or the joint payee, the amount of each installment shall be reduced to two-thirds of the original amount and payments shall continue during the entire remaining lifetime of the survivor.

Rate basis: The monthly installments guaranteed under this contract are based on:

- (1) the 1937 Standard Annuity Table,
- (2) 3½% interest, and
- (3) age nearest birthday.

SETTLEMENT OPTION TABLES

GUARANTEED MONTHLY INSTALLMENTS UNDER OPTIONS 1, 2 OR 3

(Monthly installments are shown for each \$1,000 of net proceeds applied.)

The ages shown are ages nearest birthday when the first monthly installment is payable.)

OPTION 1. INSTALLMENTS FOR A SPECIFIED PERIOD

Years	Installment	Years	Installment	Years	Installment	Years	Installment	Years	Installment	Years	Installment
1	\$84.65	6	\$15.35	11	\$9.09	16	\$6.76	21	\$5.56	26	\$4.84
2	43.05	7	13.38	12	8.46	17	6.47	22	5.39	27	4.73
3	29.19	8	11.90	13	7.94	18	6.20	23	5.24	28	4.63
4	22.27	9	10.75	14	7.49	19	5.97	24	5.09	29	4.53
5	18.12	10	9.83	15	7.10	20	5.75	25	4.96	30	4.45

OPTION 2. LIFE INCOME*

Issue Age							Issue Age						
Male	Female	Life	5 Years Certain	10 Years Certain	20 Years Certain	Installment Refund	Male	Female	Life	5 Years Certain	10 Years Certain	20 Years Certain	Installment Refund
34	39	4.11	4.10	4.08	4.00	3.98	59	64	6.56	6.45	6.15	5.28	5.78
35	40	4.16	4.15	4.13	4.04	4.03	60	65	6.74	6.62	6.28	5.31	5.90
36	41	4.21	4.20	4.18	4.08	4.07	61	66	6.93	6.79	6.41	5.35	6.03
37	42	4.27	4.26	4.23	4.12	4.12	62	67	7.13	6.97	6.55	5.39	6.16
38	43	4.33	4.32	4.29	4.16	4.16	63	68	7.35	7.16	6.69	5.43	6.29
39	44	4.39	4.38	4.34	4.21	4.21	64	69	7.57	7.36	6.83	5.47	6.44
40	45	4.45	4.44	4.40	4.26	4.27	65	70	7.81	7.58	6.98	5.51	6.59
41	46	4.52	4.51	4.47	4.30	4.32	66	71	8.06	7.79	7.12	5.54	6.75
42	47	4.59	4.58	4.53	4.35	4.37	67	72	8.33	8.03	7.27	5.57	6.91
43	48	4.67	4.65	4.60	4.40	4.43	68	73	8.62	8.26	7.42	5.60	7.08
44	49	4.75	4.73	4.67	4.45	4.49	69	74	8.92	8.52	7.58	5.63	7.26
45	50	4.83	4.81	4.75	4.50	4.56	70	75	9.24	8.78	7.73	5.65	7.46
46	51	4.92	4.89	4.82	4.56	4.62	71	76	9.59	9.06	7.88	5.67	7.66
47	52	5.01	4.98	4.90	4.61	4.69	72	77	9.95	9.34	8.03	5.69	7.86
48	53	5.10	5.07	4.99	4.66	4.76	73	78	10.33	9.63	8.18	5.70	8.08
49	54	5.20	5.17	5.07	4.72	4.84	74	79	10.74	9.94	8.32	5.71	8.32
50	55	5.31	5.27	5.17	4.77	4.91	75	80	11.19	10.27	8.46	5.72	8.56
51	56	5.42	5.38	5.26	4.83	4.99	76	81	11.66	10.59	8.60	5.73	8.81
52	57	5.54	5.49	5.36	4.89	5.08	77	82	12.15	10.93	8.73	5.73	9.09
53	58	5.66	5.61	5.46	4.94	5.17	78	83	12.67	11.27	8.86	5.74	9.37
54	59	5.79	5.73	5.56	5.00	5.26	79	84	13.25	11.63	8.97	5.74	9.67
55	60	5.93	5.87	5.67	5.05	5.35	80	85	13.85	11.99	9.08	5.75	9.98
56	61	6.08	6.00	5.79	5.10	5.45	81	86	14.49	12.36	9.18	5.75	10.32
57	62	6.23	6.14	5.90	5.15	5.56	82	87	15.17	12.74	9.28	5.75	10.66
58	63	6.39	6.29	6.02	5.21	5.67	83	88	15.92	13.11	9.36	5.75	11.03

OPTION 3. JOINT AND TWO-THIRDS TO SURVIVOR*

Age of Other Payee. Age of Annuitant (Male, age on first line. Female age on second line).

M	F	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70
55	60	\$5.53	\$5.59	\$5.65	\$5.71	\$5.78	\$5.84	\$5.91	\$5.98	\$6.05	\$6.11	\$6.18	\$6.25	\$6.32	\$6.39	\$6.46	\$6.53
56	61	5.59	5.65	5.72	5.78	5.85	5.92	5.99	6.06	6.13	6.20	6.27	6.34	6.42	6.49	6.56	6.64
57	62	5.65	5.72	5.78	5.85	5.92	5.99	6.07	6.14	6.21	6.29	6.36	6.44	6.51	6.59	6.67	6.74
58	63	5.71	5.78	5.85	5.92	6.00	6.07	6.14	6.22	6.30	6.37	6.45	6.53	6.61	6.69	6.77	6.85
59	64	5.78	5.85	5.92	6.00	6.07	6.15	6.23	6.30	6.38	6.47	6.55	6.63	6.71	6.80	6.88	6.96
60	65	5.84	5.92	5.99	6.07	6.15	6.23	6.31	6.39	6.47	6.56	6.64	6.73	6.82	6.90	6.99	7.08
61	66	5.91	5.99	6.07	6.14	6.23	6.31	6.39	6.48	6.56	6.65	6.74	6.83	6.92	7.01	7.11	7.20
62	67	5.98	6.06	6.14	6.22	6.30	6.39	6.48	6.57	6.66	6.75	6.84	6.94	7.03	7.13	7.22	7.32
63	68	6.05	6.13	6.21	6.30	6.38	6.47	6.56	6.66	6.75	6.85	6.94	7.04	7.14	7.24	7.34	7.44
64	69	6.11	6.20	6.29	6.37	6.47	6.56	6.65	6.75	6.85	6.95	7.05	7.15	7.25	7.36	7.47	7.57
65	70	6.18	6.27	6.36	6.45	6.55	6.64	6.74	6.84	6.94	7.05	7.15	7.26	7.37	7.48	7.59	7.70
66	71	6.25	6.34	6.44	6.53	6.63	6.73	6.83	6.94	7.04	7.15	7.26	7.37	7.49	7.60	7.72	7.84
67	72	6.32	6.42	6.51	6.61	6.71	6.82	6.92	7.03	7.14	7.25	7.37	7.49	7.61	7.73	7.85	7.97
68	73	6.39	6.49	6.59	6.69	6.80	6.90	7.01	7.13	7.24	7.36	7.48	7.60	7.73	7.85	7.98	8.11
69	74	6.46	6.56	6.67	6.77	6.88	6.99	7.11	7.22	7.34	7.47	7.59	7.72	7.85	7.98	8.11	8.25
70	75	6.53	6.64	6.74	6.85	6.96	7.08	7.20	7.32	7.44	7.57	7.70	7.84	7.97	8.11	8.25	8.39

*Figures for ages not shown will be furnished on request.

GENERAL PROVISIONS

1. DEFINITIONS:

The following terms are defined solely for the purpose of interpreting and administering this Agreement:

TERMINATION, shall mean maturity of a policy as a result of, (a) the death of the Insured, or (b) endowment, or (c) surrender of such policy for its cash value, or (d) final amounts payable after termination of Family Income payments.

NET PROCEEDS, when applicable to the termination date, shall be the net amount payable under a policy on the termination date, excluding, however, any unearned premiums paid in advance thereunder.

NET PROCEEDS, when applicable to any time other than the termination date, shall be the single sum which equals (a) the then commuted value of the remainder of the death benefit of a policy containing a Family Income provision, or (b) the then commuted value of any installments certain not yet due under Options A or B, or (c) the amount then held under Options C or D, including any unpaid accrued interest thereon, as the case may be.

CHILDREN, if not designated by name, shall include only the lawful and legally adopted sons and daughters of the primary payee and not grandchildren or other descendants. This classification is available only if the primary payee was the Insured hereunder.

BY REPRESENTATION shall mean succeeding, by reason of the death of a parent, to net proceeds which would have been apportioned to or further held for such parent, had he lived.

ESTATE OF SURVIVOR shall mean the executor or administrators of the last survivor of the payees designated in preceding Sections of the same Table.

OPTION shall mean the corresponding Option appearing in the policy under the heading "Optional Modes of Settlement" to be attached hereto. If the policy does not contain said "Optional Modes of Settlement", this Agreement shall constitute a request to add hereto "Optional Modes of Settlement" corresponding to that contained in policies which the Company is now issuing.

POLICY shall mean annuity contract when such meaning is applicable; and masculine pronouns shall include the feminine.

2. PAYMENTS UNDER A TABLE:

(a) If there is more than one Table, each Table shall be considered separately in construing the provisions of this Agreement.

(b) Payment of the net proceeds under a Table shall be in accordance with the first Section thereof in which there is a payee surviving, and at the death of the last survivor of the payees designated in such Section, payment of any remaining net proceeds shall be in accordance with the next succeeding Section in which there is a then surviving payee, and so on from Section to Section until payment shall have been made of the entire net proceeds under such Table.

(c) In order to be entitled to receive payments provided for him under a Section, a payee must be living on their respective due dates.

(d) If a Section of a Table designates two or more payees but does not designate as payees by representation the children of deceased children of the primary payee, payment of net proceeds under such Section shall be as follows:

If such Section does not provide for division of net proceeds into separate shares, such payees who are living at the time of each payment shall share the payments under such Section and such shares shall be equal unless otherwise expressly provided therein;

If such Section provides for division of net proceeds into separate shares, one such share, payable as provided in such Section, shall be for each such payee who is living at the death of the last survivor of the payees designated in preceding Sections, and such shares shall be equal unless otherwise expressly provided therein. At the subsequent death of a payee designated in such Section, any net proceeds then held for such payee shall be paid to any then surviving payees of such Section in single sums proportionate to their original shares.

(e) If a Section of a Table designates as payees by representation the children of deceased children of the primary payee, payment of net proceeds under such Section shall be as follows:

• Net proceeds at the death of the last survivor of the payees designated in preceding Sections shall be divided into equal separate shares, one share, payable as provided in such Section, for each then surviving designated child of the primary payee, if any, and one share, payable in equal single sums, to the then surviving children, if any, of each deceased designated child of the primary payee;

At the subsequent death of a child of the primary payee, any net proceeds then held for such child shall be paid in equal single sums to his then surviving children, if any, otherwise such net proceeds shall be divided into equal separate shares, one share, payable in one sum, to each then surviving designated child of the primary payee, if any, and one share, payable

3. PRIVILEGES:

(a) If a payee designated in a Section of a Table is given in such Section a privilege of withdrawal or commutation, such payee may, subject to any limitations with respect thereto stated in such Section and upon written notice to the Insurance Company accompanied by this Agreement, make withdrawals in amounts of not less than \$100.00 each from any net proceeds held for him in such Section under Options C or D, or, as the case may be, elect to receive the commuted value of any installments certain or share therein payable to him in such Section under Options A or B, but under Option B only if the right to installments for life has expired with the primary payee.

Wherever the following appear herein..... they shall be read as:

Option A
Option B
Option C
Option D

Option 3
Option 4
Option 1
Option 2

(b) If a primary payee designated in Section 1 of a Table is given in such Section the privilege of substituting payment under another Option:

The amount to be applied under such other Option shall be the net proceeds held for such payee in Section 1 at the time such privilege is exercised, but such privilege shall not be available when such net proceeds are less than \$1000.

A primary payee may make only one such substitution and must be by written notice accompanied by this Agreement.

4. OPTION PAYMENTS ALTERED OR TERMINATED:

After thirty full years following the termination date of a policy, no Option payments shall be made under any Section of a Table. If the net proceeds at the death of the last survivor of the primary payees designated in Section 1 shall be less than \$1,000, then such share shall be immediately paid in one sum. If net proceeds held for a payee under Option C be reduced by withdrawals to less than \$1,000, then such net proceeds shall be immediately paid in one sum.

If the Option payments for the fractional part of a year shall amount to less than \$10.00 each, the Company will pay at such intervals as will make each payment amount to at least \$10.00. If a Section of a Table provides for Option D installments and the sum of one year's tabular installments shall be less than 5% of the net proceeds applied under that Option, then the Company shall increase each such tabular installment by the amount necessary to achieve such percentage, any provision of said Option for a different percentage notwithstanding.

5. RELIANCE ON AFFIDAVITS:

Before permitting or taking any action provided by this Agreement which is contingent upon the death or survival of any payee, the Company shall be furnished with due proof thereof. As to any facts relating to any payee, including dates of birth and death, and identity, the Company may rely upon any affidavit or other written evidence deemed satisfactory to it, and is hereby released from all liability in relying and acting upon the statements contained therein.

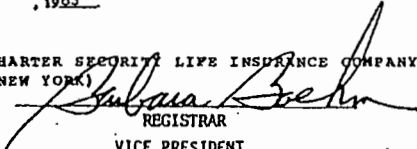
6. EFFECT OF CHANGES OF BENEFICIARY AND EXERCISE OF PRIVILEGES UNDER THIS AGREEMENT:

If allowed by the statutes of the state of residence, the primary payee may, without the consent of a secondary payee, (a) change the designation of contingent beneficiaries, and (b) freely exercise the privileges contained in Section 1 of any Table herein. In the absence of an enabling statute, the consent of the secondary payee (s) shall be required for the exercise of all such rights.

7. PAYMENT TO MINORS:

Any proceeds due and payable to any minor payee hereunder shall be paid to the legally appointed guardian of such minor except to the extent that provision is made by statute for payment directly to a minor.

Dated CHARTER SECURITY LIFE INSURANCE COMPANY (NY) INC. SEVENTEENTH
day of JUNE, 1983

CHARTER SECURITY LIFE INSURANCE COMPANY
(NEW YORK)

REGISTRAR
VICE PRESIDENT

SUPPLEMENTARY AGREEMENT

(No. SC1126)

Due to termination, as of May 5, 83 of Policy No(s) 83A08153 issued by Charter Security Life Insurance Company (New York) on the life of Dennis J. Dimon the undersigned hereby requests that the aggregate net proceeds payable under said policy as of the termination date be paid to the payees designated in, and in the order and manner provided in, the following Tables and in the General Provisions of this Agreement.

The undersigned surrenders said policy(s) to the Insurance Company and, concurrently herewith, revokes any beneficiary designation and any election of settlement heretofore made under the said policy(s).

PAYEES	MANNER OF PAYMENT	PRIVILEGES
TABLE I		
SECTION ONE - PRIMARY PAYEE		
Dennis Dimon Laurel Lane West Kingston, RI 02892	Monthly payments in the amount of \$1,450.45, increasing 3% annually, commencing on June 6, 1983, for a period of 240 months certain and life thereafter.	
SECTION TWO-CONTINGENT PAYEE		
Katherine I. Dimon, Wife	In the same manner as the Primary Payee, for the period certain.	

(SEE OTHER SIDE FOR ANY COMPANY ENDORSEMENTS)

SIP-100

K-0019

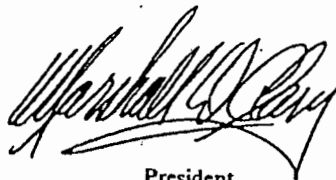
Charter Security Life Insurance Company (New York)

ENDORSEMENT

This amendment is attached to and forms part of the policy.

The Annual Statement of Values provision on Page 7 is hereby amended as follows:

The words "As of each contract anniversary" are replaced with the words "At least once each year".



President

RA-104E1
4/84

K-0020

EK906 3-81 150M
PRINTED IN U.S.A.

BANK CODE	CHECK NO.	CLAIM OFFICE PREFIX	K I N D	S E R I A L	CLAIM SERIAL NO.	CHECK DIGIT	SUFFIX	C A T E	POLICY PREF. NUMBER SUFF.	CHECK DIGIT	LOSS/DISCOVERY DATE	DAILY SEQUENC NO.
58	25 000 585	399	L	M	106125	9	Z	DM	015241	2	01 24 81	48

[illegible]

TOTAL 175,000.00

TYPE OF EXP.	TAXPAYER NO.	IRS STATE CODE	SERVICE FEE	CLOSE CLAIM	SPECIAL ID	REFUND REIMB. TYPE OF REFUND	ENTRY DATE
							04/13/83

TO THE ORDER OF CHARTER SECURITY LIFE INSURANCE COMPANY

PAYMENT FOR	PREMIUM FOR IMMEDIATE ANNUITY.
-------------	--------------------------------

MAIL TO	BY HAND- J. NOE.
---------	------------------



Kemper GROUP

CLAIM CHECK
NUMBER 250-0-008-585

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST CO. OF CHICAGO, CHICAGO, ILLINOIS 60693

PAY	\$175,000.00*	TO THE ORDER OF	CHARTER SECURITY LIFE INSURANCE COMPANY	AMOUNT	\$175,000.00*
-----	---------------	-----------------	---	--------	---------------

ISSUED AT NEW YORK, N.Y.	DATE APRIL 13, 1983	BY HAND- J. NOE.
PAYMENT FOR PREMIUM FOR IMMEDIATE ANNUITY.		
CLAIM NUMBER 399 L M 106125 Z	POL. NO. DM 015241	LOSS DATE 01/24/81
INSURED MEMBERS OF THE POINT JUDITH FISHERMEN'S COOPERATIVE ASSOCIATION, INC.		
CLAIMANT	PROD. NO. 06106043	BY <i>[Signature]</i> NOT NEGOTIABLE CLAIM OFFICE COPY

2500008585# :071000039: 50=10187#

TWO SIGNATURES REQUIRED FOR AMOUNT OVER \$2000

K-0123

BOOTH AND BRODSKY
COUNSELLORS AT LAW

JOHN M. BOOTH
IRVING BRODSKY*
W. SLATER ALLEN, JR.
*ALSO MEMBER MASS. BAR

TELEPHONE
(401) 751-3400

SUITE 515
155 WESTMINSTER STREET
PROVIDENCE, RHODE ISLAND 02903

May 3, 1983

Mr. Jesus LaTorre
c/o Kemper Group
5 World Trade Center
New York, New York 10048

OCEAN MARINE CLAIMS
NEW YORK

J. LaTORRE MAY 11 1983

Re: Jenny C. Inc.
Insured: Members of the Point Judith
Fishermen's Co-operative Association, Inc.
Claimant: Dennis Jay Dimon
Date of Loss: January 25, 1981
File No. 399LM-106125-Z

Final Report

Dear Mr. LaTorre:

The captioned matter was concluded this morning. A hearing was had at which Leonard Decof, Esquire, reported to the Court for approximately fifty minutes on the record. Mr. Decof stated to the Court the steps he had taken to inform himself of the details of the settlement and the state of comprehension of those details by Dennis Dimon. In sum, he stated to the Court that Dimon had the capacity to understand and evaluate the settlement and that Dimon evaluated the settlement, understood it thoroughly and entered into it entirely of his own free will. Thereupon, the Court approved the report of the Master, ordered that the settlement be approved and that Kemper pay the Master's charge within one week. The Court then closed the record and left the bench. A copy of the transcript of the proceeding has been ordered by order of the Court from Mr. Joseph Fontes at the United States District Court, United States Court House, Providence, Rhode Island 02903.

I thereupon delivered your checks No. 250-0-008-584 and 250-0-008-585 to plaintiff's attorney, Mr. Hughes. I received in return a Stipulation which I have conformed to that on file in the Court. The signatures on the Stipulation enclosed are original signatures, except of that of the Court. I also enclose an original General Release; a copy has been retained in our office. I also enclose copies of certified mail receipts showing

cc: R.E. WILCOX FROM CLAIM I.G. 5-8
H. WOLF AND CLAIM SUMMIT
FILE 10000N - - Z

K-0059

BOOTH AND BRODSKY

notice of this proceeding given to the resident attorney in the Rhode Island office of Home Insurance Company and to Mr. John Falvy, New England Claims Supervisor of Home Insurance Company, P.O. Box 800, New Haven, Connecticut 06473. The originals are on file in the Court. Neither Mr. Lietar nor Mr. Falvy appeared.

I also enclose the Master's bill; the hourly rate was set by the Court. As stated on the telephone, when it was agreed between counsel for Home and myself to proceed with the Master, Mr. Wells agreed to pay half of the costs. This morning, however, Mr. Wells said that such a payment would be deducted from the coverage and therefore passed along to Kemper. In my opinion, this is further evidence of bad faith on the part of Home Insurance Company. The Master's fee should be discussed with Mr. Falvy whose name and address appears above.

I enclose my final bill in this matter, including the cost of the transcript.

Very truly yours,



W. Slater Allen, Jr.,

WSA/cmm

Enclosures

In The Matter Of:

*Dennis Dimon v.
Met Life Insurance Co., et al.*

*Barbara Fasman
Vol. 1, May 10, 2006*

*Greenhouse Reporting, Inc.
Computerized Litigation Support
363 Seventh Avenue
20th Floor
New York, NY 10001
(212) 279-5108 FAX: (212) 279-5431*

*Original File BF051006.V1, 94 Pages
Min-U-Script® File ID: 3923061621*

Word Index included with this Min-U-Script®

**Dennis Dimon v.
Met Life Insurance Co., et al.**

**Barbara Fasman
Vol. 1, May 10, 2006**

Page 1

[1]
[2] UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
[3]
[4] DENNIS DIMON,
Plaintiff,
[5] -against-
[6] MET LIFE INSURANCE CO., KEMPER INSURANCE
CO., MORGAN STANLEY D.W., INC., MICHAEL B.
[7] LATTI, LATTI ASSOCIATES and LATTI &
ANDERSON, LLP
[8] Defendants.
[9]
[10] May 10, 2006
10:00 a.m.
[11]
[12]
[13]
[14] Deposition of Met Life Insurance Co.
[15] by Barbara Fasman, 30(b)(6) witness, held at
[16] the offices of Met Life, One Met life Plaza,
[17] 27-01 Queens Plaza North, Long Island City,
[18] New York, before Vicky Galitsis, a Certified
[19] Shorthand Reporter and Notary Public of the
[20] State of New York.
[21]
[22]
[23]
[24] GREENHOUSE REPORTING, INC.
363 Seventh Avenue - 20th Floor
New York, New York 10001
[25] (212) 279-5108

Page 2

[1]
[2] APPEARANCES:
[3]
[4] THE KAPLAN BOND GROUP
Attorneys for the Plaintiff
[5] 88 Black Falcon Avenue
Boston, Massachusetts 02210
[6] BY: BRIAN KEANE, ESQ.,
of Counsel
[7] (Appearing Telephonically)
[8]
[9]
[10] CIAPCIAK & ASSOCIATES, P.C.
Attorneys for the Defendant
[11] Met Life Insurance Co.
99 Access Road
[12] Norwood, Massachusetts 02062
BY: JAMES J. CIAPCIAK, ESQ.
[13]
-and-
[14]
Alvin Pasternack, Esq.
[15] Associate General Counsel,
Law Department
[16] One MetLife Plaza
27-01 Queens Plaza North
[17] Long Island City, New York 1101
[18]
[19]
DRINKER BIDDLE & REACH, ESQS.
[20] Attorneys for the Defendant
Kemper Insurance Co.
[21] One Logan Square
18th and Cherry Streets
[22] Philadelphia, Pennsylvania 19103
BY: TIMOTHY O'DRISCOLL, ESQ.,
[23] of Counsel
(Appearing Telephonically)
[24]
[25]

Page 3

[1]
[2] APPEARANCES: (Continued.)
[3]
[4] SULLIVAN WEINSTEIN & McQUAY, ESQS.
Attorneys for the Defendants
[5] Morgan Stanley D.W., Inc.
Two Park Plaza
[6] Boston, Massachusetts 02116
BY: SANDRA SUE McQUAY, ESQ.
[7] (Appearing Telephonically)

8

[9] TODD & WELD, ESQS.
Attorneys for the Defendants
[10] Michael B. Latti, Latti Associates
and Latti & Anderson, LLP
[11] 28 State Street
Boston, Massachusetts 02104
[12] BY: JED DeWICK, ESQ.
of Counsel
[13] (Appearing Telephonically)

[14]
[15]
[16]
[17]
[18]
[19]
[20]
[21]
[22]
[23]
[24]
[25]

Page 4

B. Fasman

[1] (Exhibits 1 through 21 were
[2] pre-marked for identification.)
[3] BARBARA FASMAN,
[4] stating an address of One MetLife
[5] Plaza, 27-01 Queens Plaza North,
[6] Long Island City, New York 11101
[7] having been first duly sworn by a
[8] Notary Public of the State of New
[9] York, was examined and testified as
[10] follows:
[11] EXAMINATION BY MS. McQUAY:
[12] Q: Ms. Fasman, this is Sue McQuay.
[13] As I indicated already, I represent the
[14] defendant Morgan Stanley. Because we are
[15] conducting this deposition today by telephone
[16] as a request of your counsel, because we are
[17] doing this over the telephone, it's
[18] particularly important that you speak up and
[19] we'll try to do the same so that we can hear
[20] each other clearly.
[21] It's also very important that you
[22] let me finish my question and I accordingly
[23] will try to let you finish your answer so we
[24] don't talk across each other.
[25]

Page 5

B. Fasman

[1] Further if you have any questions
[2] or you don't understand a question that I'm
[3] asking you, please let me know and I will try
[4] to rephrase, is that clear?
[5] A: Yes.
[6] Q: Now, is it Ms. Fasman? What is
[7] your address, please?
[8] A: Mrs. Fasman.
[9] Q: Okay, Mrs. Fasman. What is your
[10] address, please?
[11] A: Met Life at One Met Life Plaza,
[12] 2701 Queens Plaza North, Long Island City
[13] New York, 11101.
[14] Q: Am I correct in understanding
[15] that you work for Met Life?
[16] A: I do work for Met Life.
[17] Q: What is your position with Met
[18] Life?
[19] A: My title is consultant.
[20] Q: I'm sorry?
[21] A: My title is consultant.
[22] Q: Titlist?
[23] A: My title is consultant.
[24] Q: Your title is consultant, okay.
[25]

Page 6

B. Fasman

[1] And what are your duties and responsibilities
[2] as a consultant for Met Life?
[3] A: I support our Corporate Customer
[4] Relations Department and our Administrative
[5] Offices with regard to annuity questions and
[6] complaints. I also do calculations of various
[7] technical amounts as requested.
[8] Q: Would you explain what you mean
[9] when you say you do calculations of various
[10] technical amounts when requested?
[11] A: Present values of benefits,
[12] interest calculations, any mathematical
[13] calculation that the administrative offices
[14] are not able to handle.
[15] Q: When you say that your title at
[16] Met Life is consultant, am I correct in
[17] understanding that you are in fact an employee
[18] of Met Life?
[19] A: Yes.
[20] Q: How long have you been with Met
[21] Life?
[22] A: 25 years.
[23] Q: When did you begin work?
[24] A: I began work at Met Life in
[25]

**Dennis Dimon v.
Met Life Insurance Co., et al.**

**Barbara Fasman
Vol. 1, May 10, 2006**

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B. Fasman

[1] June of 1981.
[2] Q: How long have you had the title
[3] of consultant?
[4] A: I believe it's four years.
[5] Q: When you started working for Met
[6] Life in June of 1981 in what position did you
[7] begin?
[8] A: I was a senior actuarial
[9] associate, I believe.
[10] Q: And what were your duties and
[11] responsibilities in that position?
[12] A: I had that title for several
[13] years and I was in several positions, so it
[14] varied.
[15] Q: Can you describe in what way,
[16] what your responsibilities were and in what
[17] way they varied from time to time?
[18] A: Yes. I did expense analysis, I
[19] did pricing of group close outs, I did pricing
[20] of individual life insurance. I then had a
[21] new title, I was called an actuary and in
[22] that role I also did pricing of individual
[23] life insurance, and I did pricing and product
[24] development for annuities.
[25]

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B. Fasman

[1] Q: How long did you hold the title
[2] of senior actuarial associate or actuary?
[3] A: Combined?
[4] Q: Yes.
[5] A: 21 years.
[6] Q: Okay. So you had those positions
[7] until your current position as a consultant
[8] approximately four years ago?
[9] A: Yes.
[10] Q: Can you tell us your educational
[11] background?
[12] A: Yes. I have a Bachelors of Arts
[13] in economics and mathematics and I have — I
[14] am a fellow of the Society of Actuaries.
[15] Q: Where did you receive your
[16] bachelor's degree?
[17] A: State University of New York at
[18] Albany.
[19] Q: When did you receive your
[20] bachelor's degree?
[21] A: In 1976.
[22] Q: And in connection with the
[23] deposition this morning, Morgan Stanley has
[24] requested that Met Life designate one or more
[25]

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B. Fasman

[1] persons to testify on its behalf regarding the
[2] subject matter of the complaint in this
[3] action, and any defenses thereto of Met Life.
[4] Are you the person who has been so designated?
[5] A: Yes.
[6] Q: Okay. Have you seen the
[7] complaint in this action?
[8] A: Yes.
[9] Q: What, if anything, did you do to
[10] prepare for today's deposition?
[11] A: I met with my counsel.
[12] Q: And your counsel being
[13] Mr. Ciapciak?
[14] A: Yes.
[15] Q: As well as Mr. Pasternack?
[16] A: Yes, Mr. Pasternack was also
[17] there.
[18] Q: Okay. Was anyone else present?
[19] A: Yes.
[20] Q: Who else?
[21] A: Another attorney.
[22] Q: I'm sorry?
[23] A: Another attorney, Patker and
[24] Reinheart.
[25]

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B. Fasman

[1] Q: Another attorney?
[2] A: Yes.
[3] Q: Okay. Anyone else?
[4] A: No.
[5] Q: And when did this meeting take
[6] place?
[7] A: Yesterday.
[8] Q: Other than meeting with your
[9] attorneys yesterday, did you do anything else
[10] to prepare for today's deposition?
[11] A: Yes.
[12] Q: What else did you do?
[13] A: I consulted with our
[14] administrative office to see if there was any
[15] information they had that I did not have.
[16] Q: With whom in your administrative
[17] office did you consult?
[18] A: Cynthia Yansee.
[19] Q: I'm sorry?
[20] A: Cynthia Yansee.
[21] Q: What is her position?
[22] A: I don't know her title but she
[23] works in the payout area of our administrative
[24] office.
[25]

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B. Fasman

[1] *B. Fasman*
 [2] Q: And what did you ask? Tell me
 [3] about your discussion with Ms. Yansee.
 [4] A: I asked her if all the documents
 [5] she had previously given me were all that they
 [6] had in their files. And I asked her if she
 [7] was familiar with Charter specifically.
 [8] Q: What else did you ask her?
 [9] A: I really don't recall.
 [10] Q: Okay. What did she tell you?
 [11] A: She told me that she wasn't
 [12] familiar with Charter — I also asked her if
 [13] there was a procedural manual for Charter.
 [14] She told me she wasn't familiar with Charter
 [15] and that there was no procedure manual from
 [16] Charter and that all the documents that she
 [17] had previously supplied was all that were
 [18] available.
 [19] Q: Did she tell you anything else?
 [20] A: She also told me Met Life doesn't
 [21] have a written procedure manual.
 [22] Q: Anything else?
 [23] A: Not that I recall.
 [24] Q: And why were you inquiring about
 [25] whether or not there existed a procedure

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B. Fasman

[1] *B. Fasman*
 [2] manual?
 [3] A: In order to be able to respond to
 [4] my counsel.
 [5] Q: Explain further why you were
 [6] interested in knowing why there was a
 [7] procedure manual?
 [8] MR. CIAPCIAK: She said, in
 [9] response to a question from counsel.
 [10] And I'm going to instruct her not to
 [11] answer about conversations with
 [12] counsel.
 [13] MS. McQUAY: I'm not interest in
 [14] conversations with counsel.
 [15] Q: But other than your counsel
 [16] inquiring about it, was there any other reason
 [17] why you were asking whether there was a
 [18] procedure manual?
 [19] A: No.
 [20] Q: Now other than this
 [21] conversation — when did this conversation
 [22] with Ms. Yansee take place?
 [23] A: I really don't recall if it
 [24] was — I really don't recall. It was either
 [25] this week or last week.

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B. Fasman

[1] *B. Fasman*
 [2] Q: Okay. Did you have one such
 [3] conversation?
 [4] A: Yes, in preparation for the
 [5] deposition, yes.
 [6] Q: Other than speaking with
 [7] Ms. Yansee and meeting yesterday with your
 [8] counsel, did you do anything else to prepare
 [9] for today's deposition?
 [10] A: I went over the premarked
 [11] exhibits.
 [12] Q: Anything else?
 [13] A: I called one other person who is
 [14] not an employee of Met Life.
 [15] Q: Who did you call?
 [16] A: Teresa Mannino.
 [17] Q: Why did you call her?
 [18] A: To see if she had any information
 [19] about Charter.
 [20] Q: What led you to believe that she
 [21] might have information about Charter?
 [22] A: She's a former employee and she
 [23] was in the administrative office when we
 [24] acquired Charter.
 [25] Q: Where is she now?

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B. Fasman

[1] *B. Fasman*
 [2] A: She's retired.
 [3] Q: What did she tell you when you
 [4] spoke to her?
 [5] A: She said that she really didn't
 [6] remember anything and she was not able to
 [7] answer any of my specific questions.
 [8] Q: Did she have any knowledge
 [9] whatsoever about the circumstances of this
 [10] case?
 [11] A: I didn't ask her about the
 [12] circumstances of this case.
 [13] Q: What did you ask her about?
 [14] A: I asked her about procedures. I
 [15] asked her if there was anyone else at Met Life
 [16] that might have information that I should
 [17] know, and I asked her how the contract numbers
 [18] were assigned, because there seemed to be
 [19] multiple contract numbers.
 [20] Q: And why did you ask her about
 [21] procedures?
 [22] A: She was in charge of the
 [23] administrative office at the time we took over
 [24] Charter.
 [25] Q: And what specific procedures were

**Dennis Dimon v.
Met Life Insurance Co., et al.**

**Barbara Fasman
Vol. 1, May 10, 2006**

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B. Fasman

[1] you interested in learning about?
[2] **A:** I didn't have any specific
[3] questions I just wanted to know any general
[4] information.
[5] **Q:** Regarding what kind of
[6] procedures?
[7] **A:** Administrative procedures with
[8] regard to immediate annuities.
[9] **Q:** What kind of administrative
[10] procedures?
[11] **A:** I didn't have anything specific
[12] in mind.
[13] **Q:** Well, in terms of administrative
[14] procedures regarding annuities, what were you
[15] interested in learning?
[16] **A:** Whatever I could.
[17] **Q:** What specifically were you
[18] interested in finding out about?
[19] **A:** I didn't have anything specific.
[20] **Q:** Well, administrative procedures
[21] regarding what with regard to annuities; their
[22] issuance, what?
[23] **A:** Their issuance, how we paid the
[24] checks, how we communicate with customers,
[25]

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B. Fasman

[1] anything.
[2] **Q:** And am I correct in understanding
[3] that Ms. Mannino was not able to provide you
[4] with any such information?
[5] **A:** That's correct, she did not give
[6] me any information.
[7] **Q:** Were you able to acquire any
[8] information regarding these administrative
[9] procedures from any other source?
[10] **A:** No, I wasn't, other than from the
[11] exhibits that I can look at, and other than
[12] that, no.
[13] **Q:** When you say other than from the
[14] exhibits you can look at, are you referring to
[15] the exhibits that have been premarked for this
[16] deposition?
[17] **A:** Yes, I am.
[18] **Q:** Are you referring to anything
[19] else?
[20] **A:** No I'm not.
[21] **Q:** Okay. Other than asking
[22] Ms. Mannino about administrative proceedings
[23] what else did you ask her about?
[24] **A:** I asked her about if anyone else,
[25]

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B. Fasman

[1] if there was anyone else at Met Life that was
[2] — that I could talk to about this.
[3] **Q:** What did she say?
[4] **A:** Not that she could think of.
[5] **Q:** Have you learned the identity of
[6] anyone else at Met Life from any other source?
[7] **A:** No, I haven't.
[8] **Q:** I believe you testified that you
[9] also asked her how contract numbers were
[10] assigned because there were multiple contract
[11] numbers in this case?
[12] **A:** Yes.
[13] **Q:** What did she say?
[14] **A:** She didn't remember.
[15] **Q:** When you say there are multiple
[16] contract numbers that you've seen in this case
[17] what are you referring to?
[18] **A:** Well, there's the Charter
[19] number on the top of the application, and then
[20] there are — there's a number that I believe
[21] is 1126, and there's different prefixes in
[22] front of it.
[23] **Q:** Have you been able to garner or
[24] develop any explanation for why there are such
[25]

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B. Fasman

[1] multiple contract numbers?
[2] **MR. CIAPCIAK:** Other than the
[3] premarked exhibits?
[4] **MS. McQUAY:** Any explanation.
[5] **A:** Only that the one on the top of
[6] the exhibit is a Charter number, no. That's
[7] the only thing I was able to understand
[8] completely. And I'm not sure where I got that
[9] information.
[10] **Q:** We'll come back to that when we
[11] get to the exhibits themselves.
[12] Other than what you already told
[13] me about, did you do anything else to prepare
[14] for today's deposition?
[15] **A:** Not that I can think of.
[16] **Q:** Are you aware of anyone in the
[17] company who is more knowledgeable than you
[18] regarding the claims in this case?
[19] **A:** No.
[20] **Q:** Are you aware of anyone outside
[21] of Met Life who is more knowledgeable?
[22] **A:** No.
[23] **Q:** I would ask you if you would turn
[24] now to what has been marked as Exhibit 1.
[25]

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B. Fasman

[1] **A:** Okay.

[2] (Exhibit 1, Annuity Application

[3] was introduced for identification.)

[4] **Q:** Can you describe to me what this

[5] document is?

[6] **A:** This document appears to be an

[7] annuity application.

[8] **Q:** And is this one of the documents

[9] that you reviewed in preparation for today's

[10] deposition?

[11] **A:** Yes, it is.

[12] **Q:** Does this appear to be a form of

[13] annuity application that was used by Charter

[14] Security Life Insurance Company?

[15] **A:** Yes.

[16] **Q:** Okay. What is the relationship

[17] between Metropolitan Life and Charter Security

[18] Life Insurance Company?

[19] **MR. CIAPCIAK:** Objection. Are

[20] you looking for a legal relationship?

[21] She wasn't educated on —

[22] **MS. McQUAY:** I'm not looking for

[23] a legal relationship.

[24] **Q:** Is it your understanding that

[25]

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B. Fasman

[1] Charter Security was acquired by or in some

[2] other fashion became a part of Met Life?

[3] **MR. CIAPCIAK:** Sue, perhaps I can

[4] get to the point here.

[5] **MS. McQUAY:** Sure.

[6] **MR. CIAPCIAK:** If you're asking

[7] whether Met Life is responsible legally

[8] for anything that Charter might have

[9] done or didn't do in this case, Met

[10] Life is responsible.

[11] **MS. McQUAY:** I won't belabor the

[12] issue then.

[13] **MR. CIAPCIAK:** Great.

[14] **Q:** Ms. Fasman, directing your

[15] attention to Exhibit 1, at the top of the

[16] document there appears a number 83A08153, do

[17] you see that?

[18] **A:** Yes.

[19] **Q:** To what does that refer?

[20] **A:** To my understanding that refers

[21] to the number of the annuity that Charter

[22] sold, the contract number.

[23] **Q:** Okay. How did you derive that

[24] understanding?

[25]

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[1] **A:** I really don't know.

[2] **Q:** You don't know how you came to

[3] have that understanding?

[4] **A:** No, I really don't know.

[5] **MR. CIAPCIAK:** Perhaps I can

[6] help. Did you know at one time and

[7] you've forgotten or —

[8] **THE WITNESS:** I'm sure I knew at

[9] one time. I mean, I'm sure someone

[10] told me that is what a Charter

[11] number looks like, but I don't

[12] remember.

[13] **Q:** You don't remember whether you

[14] were told that, and if you were, who told you?

[15] **A:** Right, although it is noted on at

[16] least one of the letters as a policy number,

[17] but I'm not sure that's the first time I was

[18] aware of it being that.

[19] **Q:** Okay, so you don't know, other

[20] than what's reflected in the document, you

[21] don't know on what basis you believe that to

[22] be a Charter security policy number?

[23] **A:** Right.

[24] **Q:** Again directing your attention to

[25]

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[1] Exhibit 1, the application form contains

[2] information that was typed in, do you agree?

[3] **A:** Yes.

[4] **Q:** For example, there is the name of

[5] the annuitant, Dennis Dimon, his date and

[6] place of birth and so forth?

[7] **A:** Yes.

[8] **Q:** Okay. Now, all the information

[9] that was typed in on the application form,

[10] Exhibit 1, who typed it in?

[11] **A:** I have no idea.

[12] **Q:** Do you know if somebody at

[13] Charter Security typed it in?

[14] **A:** I do not.

[15] **Q:** Would that be the normal

[16] procedure in your understanding?

[17] **A:** I don't know what the normal

[18] procedure was.

[19] **Q:** Okay. Do you know when that

[20] information was typed in?

[21] **A:** No, I don't.

[22] **Q:** Do you know who provided the

[23] information that was typed in?

[24] **A:** No.

[25]

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[1] **B. Fasman**
[2] **Q:** Now, directing your attention
[3] again to Exhibit 1, there is on the form a
[4] paragraph 14 with the heading, "Special
[5] Requests," do you see that?
[6] **A:** Yes.
[7] **Q:** And then in the space for that
[8] paragraph 14, Special Requests, there appears
[9] to be some handwriting, do you see that?
[10] **A:** Yes, I do.
[11] **Q:** Do you know who inserted that
[12] handwriting that appears in that space?
[13] **A:** No, I don't.
[14] **Q:** Do you know whose handwriting it
[15] is?
[16] **A:** No.
[17] **Q:** Do you know when it was inserted?
[18] **A:** No, I don't know that either.
[19] **Q:** Do you know if it was there when
[20] the application form was signed?
[21] **A:** No.
[22] **Q:** Do you know anyone at Met Life
[23] who would have such knowledge?
[24] **A:** No, I don't.
[25] **Q:** Directing your attention again to

[1] **B. Fasman**
[2] office of Charter Security, correct?
[3] **A:** Yes, that notation is my
[4] understanding.
[5] **Q:** Okay. And would that indicate to
[6] you that the handwriting there was inserted by
[7] someone at Charter Security?
[8] **A:** No, actually not.
[9] **Q:** Do you have any reason to believe
[10] that was not the case?
[11] **A:** I don't have any reason to
[12] believe it's not the case.
[13] **Q:** Do you know when the handwriting
[14] in space 15 was inserted?
[15] **A:** No.
[16] **Q:** The handwriting in space 15 says,
[17] "Quote Number", and that appears to be — can
[18] you read the number?
[19] **A:** It appears to be S0113.
[20] **Q:** And to what does that refer?
[21] **A:** I don't know.
[22] **Q:** Has Met Life made a search of its
[23] files for a copy of any such document?
[24] **A:** Yes.
[25] **Q:** Have you been able to find any

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[1] **B. Fasman**
[2] Exhibit 1, there is a paragraph 15 that bears
[3] the title, "Amendments And Corrections (For
[4] Home Office Use Only)," do you see that?
[5] **A:** Yes.
[6] **Q:** And that space also contains some
[7] handwriting?
[8] **A:** Yes.
[9] **Q:** Do you know who inserted that
[10] handwriting?
[11] **A:** No, I don't.
[12] **Q:** It says, For Home Office Use
[13] Only, correct?
[14] **A:** Yes.
[15] **Q:** Do you understand that that
[16] refers to the home office of Charter Security?
[17] **MR. CIAPCIAK:** Are you asking if
[18] she has personal knowledge of that?
[19] **Q:** Is that what you infer from
[20] looking at the application form?
[21] **A:** Yes.
[22] **Q:** So looking at the application
[23] form, your understanding of the document where
[24] it says, For Home Office Use Only in space 15
[25] that would be — that refers to the home

[1] **B. Fasman**
[2] such document?
[3] **A:** No.
[4] **Q:** Do you know what was contained in
[5] any such document?
[6] **A:** No.
[7] **Q:** Do you know what the quote
[8] reference there consisted of?
[9] **A:** Can you please clarify the
[10] question?
[11] **Q:** It refers to Quote Number S0113
[12] as you already testified. It refers to a
[13] quote, do you know what if anything that quote
[14] consisted of?
[15] **A:** No, I don't.
[16] **Q:** Do you have any understanding
[17] about the practices or procedures of Charter
[18] Security back at the time in terms of
[19] ascribing numbers to any quotes that it gave
[20] out?
[21] **A:** No, I don't have any knowledge of
[22] that.
[23] **Q:** Do you have any knowledge or
[24] understanding of what procedures Charter
[25] Security followed back at the time in terms of

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[1] giving out quotes?
 [2] **A:** No.
 [3] **Q:** I would like to direct your
 [4] attention next, Mrs. Fasman, to what has been
 [5] marked as Exhibit 2.
 [6] (Exhibit 2, Supplemental
 [7] Agreement, was introduced for
 [8] identification.)
 [9] **A:** Okay.
 [10] **Q:** Would you describe what this
 [11] document is?
 [12] **A:** It appears to be a supplementary
 [13] agreement number SC1126.
 [14] **Q:** What in your understanding is a
 [15] supplementary agreement?
 [16] **A:** It's an agreement that describes
 [17] the benefits that are provided.
 [18] **Q:** Provided by what?
 [19] **A:** The agreement.
 [20] **Q:** When you say it describes the
 [21] benefits provided by the agreement, what
 [22] agreement are you referring to?
 [23] **A:** Well, whatever has been applied
 [24] for and requested this describes what it is
 [25]

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[1] and it summarizes it in a document.
 [2] **Q:** Okay. Is it fair to say that the
 [3] supplementary agreement form describes the
 [4] benefits that have been applied for and
 [5] provided by the annuity policy?
 [6] **A:** Yes.
 [7] **MR. CIAPCIAK:** I object to form.
 [8] Do you call it an annuity policy? Just
 [9] the terms used there, Sue, I just want
 [10] to make sure. She kind of hesitated
 [11] there.
 [12] **Q:** Do you have some problem with the
 [13] term annuity policy?
 [14] **A:** No, I'm okay with that.
 [15] **Q:** Okay.
 [16] **MR. CIAPCIAK:** Thank you.
 [17] **Q:** Now this Exhibit 2, is this a
 [18] former document that was used by Charter
 [19] Security?
 [20] **A:** I don't know. It appears to be.
 [21] **Q:** You have no reason to believe
 [22] otherwise?
 [23] **A:** Right.
 [24] **Q:** The number at the top of the
 [25]

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[1] document Exhibit 2, SC1126, do you see that?
 [2] **A:** Yes.
 [3] **Q:** What does that number refer to?
 [4] **A:** I don't know. That was one of
 [5] the questions I was trying to find out. But
 [6] it is referred to in one of the other
 [7] exhibits.
 [8] **Q:** Okay. If I understood you
 [9] correctly, there was a policy number, the
 [10] annuity policy number 83A08153, correct?
 [11] **A:** Yes.
 [12] **Q:** And that was the actual annuity
 [13] policy that was issued in your understanding?
 [14] **A:** Yes, it is.
 [15] **Q:** And am I correct in understanding
 [16] you don't know why this supplementary
 [17] agreement Exhibit 2 has a different number?
 [18] **A:** That's right.
 [19] **Q:** Does that seem unusual to you in
 [20] your experience?
 [21] **A:** Yes.
 [22] **Q:** And in what way is it unusual in
 [23] your experience?
 [24] **A:** Well, it appears there's two
 [25]

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[1] contract numbers although they are not of the
 [2] same form so I really don't know what it
 [3] means, so —
 [4] **Q:** Is it usual in your experience
 [5] that the annuity policy and the supplementary
 [6] agreement will have the same number?
 [7] **A:** It actually depends.
 [8] **Q:** On what?
 [9] **A:** On the administrative procedures
 [10] of the company.
 [11] **Q:** Based on your experience, is it
 [12] usual that the numbers are the same?
 [13] **A:** It depends, it really depends on
 [14] what contract it is that's being dealt with.
 [15] At Met Life we have some where the contract
 [16] number continues, and we have some where we
 [17] issue a supplementary agreement with a new
 [18] contract number.
 [19] **Q:** Okay. But in your experiences,
 [20] in what circumstances is there a new contract
 [21] number assigned?
 [22] **MR. CIAPCIAK:** I object to form.
 [23] Go ahead.
 [24] **A:** It depends on how the contract
 [25]

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[1] **B. Fasman**
 [2] was drafted.
 [3] Q: Again I would ask, in your
 [4] experience, in what circumstances is a new
 [5] contract number assigned?
 [6] A: I really don't know how to
 [7] explain it other than to say depending on what
 [8] the terms of the original contract are, and
 [9] what the new contract looks like there may be
 [10] a new number. If they're put on different
 [11] administrative systems there may be a new
 [12] number. I really don't know how to be more
 [13] specific.
 [14] Q: Am I correct in understanding,
 [15] however, that in your experience a different
 [16] contract number is assigned only in
 [17] circumstances where there is a new and
 [18] separate contract that's issued?
 [19] MR. CIAPCIAK: I object to form.
 [20] A: Yes.
 [21] Q: Okay. Now with regard to
 [22] Exhibit 2, who filled out this form?
 [23] A: I don't know.
 [24] Q: Would you expect that this was
 [25] filled out by someone at Charter Security?

[1] **B. Fasman**
 [2] me, as best as I can guess, and a comma.
 [3] Q: On the copy that we were
 [4] provided, I see where you are referring to,
 [5] but that is actually quite illegible and it
 [6] appears to have been scratched out, is that
 [7] the same on your copy?
 [8] A: Yes.
 [9] Q: Other than trying to decipher
 [10] what's been scratched out in those blanks, do
 [11] you have any understanding about when this
 [12] form was filled out?
 [13] A: No, I don't.
 [14] Q: Whatever dates may have been
 [15] inserted there, if at all, you don't know when
 [16] they were put there, correct?
 [17] A: That's right.
 [18] Q: Again with reference to
 [19] Exhibit 2, was there another agreement issued
 [20] by Charter Security prior to this one as far
 [21] as Dennis Dimon was concerned?
 [22] A: There is in the other exhibits,
 [23] it refers to other supplementary — other
 [24] agreements, but I don't know if that was prior
 [25] or after this one.

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[1] **B. Fasman**
 [2] A: I would expect that's true.
 [3] Q: Okay. Do you know when it was
 [4] filled out?
 [5] A: No, I don't.
 [6] Q: Do you have any understanding at
 [7] all about when it was filled out?
 [8] A: The date at the top appears to be
 [9] May 4th, 1983, but I'm not sure if that's when
 [10] it was filled out.
 [11] Q: I don't see a date on my copy?
 [12] A: Well —
 [13] Q: Am I missing — where do you see
 [14] the date?
 [15] A: There is a blank line and the top
 [16] of it, it's sort of like scratched through
 [17] where there is the fill-in number directly
 [18] under number SC1126, there are 2 black lines
 [19] where it's scratched out a little bit.
 [20] Q: Yeah.
 [21] A: So the bottom of the numbers
 [22] before the line looks like 19 and then there
 [23] is a line and it looks like an 8, and I guess
 [24] I'm guessing it's a 3. And the other piece is
 [25] a short month, and then it looks like a 4 to

[1] **B. Fasman**
 [2] Q: Okay. When you say the other
 [3] exhibits you are referring to the other
 [4] exhibits or documents that have been produced
 [5] by Met Life and that have been marked as
 [6] exhibits in this deposition?
 [7] A: Yes.
 [8] Q: Okay. Directing your attention
 [9] to Exhibit 3, can you describe what this
 [10] document is?
 [11] (Exhibit 3, a letter to Kurt
 [12] Snyder from B. Boehm dated July 14,
 [13] 1983 was introduced for
 [14] identification.)
 [15] A: This appears to be a letter from
 [16] Barbara Boehm to Kurt Snyder of Dean Witter
 [17] Reynolds.
 [18] Q: Who is Barbara Boehm?
 [19] A: According to the letter she was
 [20] the vice president of Charter Security Life.
 [21] Q: Does she still work for Charter
 [22] Security or Met Life?
 [23] A: Not as far as I know.
 [24] Q: Have you tried to determine
 [25] whether or not that's the case?

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[1] **B. Fasman**
 [2] **A:** No, I haven't.
 [3] **Q:** Has anyone at Met Life tried to
 [4] determine whether or not she still works for
 [5] them or Charter Security?
 [6] **A:** I don't know.
 [7] **Q:** But this is not an inquiry that
 [8] you or, to your knowledge, anyone else at Met
 [9] Life has made?
 [10] **A:** Right.
 [11] **Q:** Can you explain why not?
 [12] **MR. CIAPCIAK:** Was she asked to?
 [13] **MS. McQUAY:** I'm asking her can
 [14] she explain why not.
 [15] **A:** I guess I assumed that she wasn't
 [16] after I spoke with Teresa Mannino, and she was
 [17] the most knowledgeable person of the Charter
 [18] business, and she told me that she didn't know
 [19] of anyone else here.
 [20] **Q:** Did you specifically ask about
 [21] Ms. Boehm?
 [22] **A:** I don't think so.
 [23] **Q:** You had seen these exhibits with
 [24] her name on them, had you not?
 [25] **A:** Yes, I did.

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[1] **B. Fasman**
 [2] **Q:** Based on your review of this
 [3] matter, are you aware of anyone, have you seen
 [4] anyone else's name besides Mrs. Boehm and
 [5] Mr. Liguori who were involved on behalf of
 [6] Charter Security back at the time?
 [7] **MR. CIAPCIAK:** I object to form.
 [8] **Q:** Let me ask you, do you know where
 [9] Mrs. Boehm is?
 [10] **A:** No, I have no idea.
 [11] **Q:** And you made no effort to find
 [12] out?
 [13] **A:** That's right.
 [14] **Q:** And as far as you know no one at
 [15] Met Life has made any effort to locate her?
 [16] **A:** As far as I know.
 [17] **MR. CIAPCIAK:** Objection. Are
 [18] you including counsel?
 [19] **MS. McQUAY:** I'm asking this
 [20] witness who has been put forward by Met
 [21] Life, this designated witness, whether
 [22] as far as she knows anybody, anybody
 [23] has made any effort to locate
 [24] Ms. Boehm.
 [25] **A:** I don't know.

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[1] **B. Fasman**
 [2] **Q:** In Exhibit 3, Mrs. Boehm refers
 [3] to a supplementary contract having been issued
 [4] for Dennis Dimon for 240-month certain and
 [5] life that after, do you see that?
 [6] **A:** Yes, I do.
 [7] **Q:** Does Met Life have a copy of that
 [8] contract?
 [9] **A:** Not as far as I know. I've been
 [10] unable to find it.
 [11] **Q:** Have you searched for it?
 [12] **A:** I have made document requests.
 [13] **Q:** When you say you have made
 [14] documents requests, have you asked
 [15] specifically that a search be made for that
 [16] document for that contract?
 [17] **A:** I asked — no, I did not ask
 [18] specifically for that contract. I asked that
 [19] documents be searched for, any documents
 [20] relating to this situation.
 [21] **Q:** And in response to that request
 [22] you have not been able to locate a copy of
 [23] that contract?
 [24] **A:** That's correct.
 [25] **Q:** Can you explain why Met Life

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[1] **B. Fasman**
 [2] would not have a copy of that contract in its
 [3] files?
 [4] **A:** I can only speculate, so, no.
 [5] **Q:** So you can't explain why that's
 [6] the case?
 [7] **A:** No, I can't. I am not familiar
 [8] with the record retention policies or anything
 [9] like that.
 [10] **Q:** Okay. Now in Exhibit 3
 [11] Mrs. Boehm states that the original contract
 [12] contained a clerical error, and that the
 [13] reference to 240-month certain and life
 [14] thereafter was incorrectly typed in. Do you
 [15] see that?
 [16] **A:** Yes.
 [17] **MR. CIAPCIAK:** I object to form.
 [18] I don't believe that's exactly what it
 [19] says, but that's the gist of it.
 [20] **Q:** That's your understanding of what
 [21] she's saying, isn't that correct Ms. Fasman?
 [22] **A:** I'm sorry. Can you say that
 [23] again please?
 [24] **Q:** Okay. Mrs. Boehm indicates in
 [25] her letter, Exhibit 3, that the original

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[1] **B. Fasman**
[2] contract contained a clerical error and that
[3] the reference to 240-months certain and life
[4] thereafter was incorrectly typed in, does she
[5] not?
[6] **MR. CIAPCIAK:** I object to form.
[7] I don't believe it says original
[8] contract.
[9] **Q:** Is that your understanding of the
[10] gist of what she's saying in the letter,
[11] Mrs. Fasman?
[12] **A:** I am just reading it again.
[13] Well, she doesn't say original contract, she
[14] said on the above supplementary contract was
[15] incorrectly typed.
[16] **Q:** But she says she's enclosing a
[17] new contract, doesn't she?
[18] **A:** Yes.
[19] **Q:** And that certainly suggests to
[20] you, does it not, that she's referring to
[21] another contract that purportedly had a
[22] clerical error?
[23] **MR. CIAPCIAK:** I object to form.
[24] **A:** It does appear she is referring
[25] to a former contract, yes.

[1] **B. Fasman**
[2] understanding as to why she might have
[3] said that, I believe is what your
[4] trying to say, right, Sue?
[5] **MS. McQUAY:** My question stands.
[6] **Q:** Mrs. Fasman?
[7] **A:** Okay, I'm confused now after all
[8] the side talking. Can you please say it
[9] again?
[10] **Q:** Let me restate it. Can Met Life
[11] explain why it was that someone added the
[12] words life thereafter in the original contract
[13] that should not have been there?
[14] **A:** It appears it was a clerical
[15] error.
[16] **Q:** Can you explain why someone added
[17] those words if they should not have been
[18] there?
[19] **A:** No.
[20] **Q:** Now, who made this purported
[21] clerical error?
[22] **A:** I don't know.
[23] **Q:** When was it made?
[24] **A:** Sometime before July 14th, 1983.
[25] **Q:** But other than that you have no

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[1] **B. Fasman**
[2] **Q:** Now, what was the basis for
[3] Ms. Boehm's assertion that that original or
[4] former contract made a clerical error?
[5] **A:** I'm not sure what the basis for
[6] her assertion was. Although the application
[7] does show that what was applied for was a
[8] 20-year certain annuity.
[9] **Q:** My question however is, what was
[10] the basis for her assertion that the original
[11] contract that was issued had a "clerical
[12] error"?
[13] **MR. CIAPCIAK:** I object to form.
[14] Unless you know what was going through
[15] her head at the time, I'm not sure you
[16] can answer it.
[17] **A:** I don't know what the basis for
[18] her assertion was.
[19] **Q:** What was the basis for
[20] Ms. Boehm's assertion that the addition of the
[21] words "life thereafter" was a mere clerical
[22] error, do you know, have any understanding?
[23] **MR. CIAPCIAK:** That's a compound
[24] question. But I believe she testified
[25] she doesn't know. But do you have any

[1] **B. Fasman**
[2] idea?
[3] **A:** Right.
[4] **Q:** And how was it purported
[5] addition, a clerical error or addition of the
[6] words life thereafter made?
[7] **A:** I don't know.
[8] **Q:** Now, the new contract that
[9] Ms. Boehm refers to in her letter, is that the
[10] supplementary contract that has been marked as
[11] Exhibit 2?
[12] **A:** It's not clear but it appears to
[13] be that might be what she's referring to.
[14] **Q:** In the Re line on Exhibit 3,
[15] there is reference again to policy
[16] number 83A08153, did you see that?
[17] **A:** Yes.
[18] **Q:** And I believe you already
[19] testified that it's your understanding that
[20] that would be the number of the annuity policy
[21] itself?
[22] **A:** Yes.
[23] **Q:** And am I correct in understanding
[24] that Met Life does not have a copy of that
[25] annuity policy in its files?

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[1] **B. Fasman**
 [2] **A:** Yes.
 [3] **Q:** Can you explain why Met Life
 [4] would not have a copy of the annuity policy in
 [5] its files?
 [6] **A:** I don't know.
 [7] **Q:** Okay. Now, the NSC 1126 on the
 [8] Re line on Exhibit 3, am I correct in
 [9] understanding that that refers to the
 [10] supplementary agreement that has been marked
 [11] as Exhibit 2?
 [12] **A:** It appears to be, however, the
 [13] suffix is different, so I'm not sure.
 [14] **Q:** Okay.
 [15] **A:** Actually the prefix, sorry.
 [16] **Q:** The only difference is on
 [17] Exhibit 2 is number SC 1126?
 [18] **A:** Yes.
 [19] **Q:** And on Exhibit 3 the reference is
 [20] in NSC 1126?
 [21] **A:** Yes.
 [22] **Q:** And your understanding is that
 [23] that would refer to Number SC 1126?
 [24] **A:** No, that's not my understanding.
 [25] I don't know what N refers to.

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[1] **B. Fasman**
 [2] **Q:** So you don't know if that N
 [3] refers to number or why it's there?
 [4] **A:** That's right.
 [5] **Q:** Okay. Now, directing your
 [6] attention to what has been marked as
 [7] Exhibit 4.
 [8] (Exhibit 4, a letter to Robert
 [9] Foley from John L. Noe, dated
 [10] August 12, 1983 was introduced for
 [11] identification.)
 [12] **A:** Before we go to Exhibit 4, can I
 [13] just use the ladies' room?
 [14] **Q:** Certainly, by all means. Any
 [15] time you need a break just tell us so and
 [16] we'll be happy to have a break.
 [17] **A:** Okay, thank you.
 [18] (Recess: 10:45 a.m. to
 [19] 10:51 a.m.)
 [20] **Q:** I would like to direct your
 [21] attention now to what has been marked as
 [22] Exhibit 4 in the deposition.
 [23] **A:** Okay.
 [24] **Q:** And this is a letter dated is
 [25] August 12th, 1983 from a Mr. John Noe at

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[1] **B. Fasman**
 [2] Kemper, correct?
 [3] **A:** Yes.
 [4] **Q:** And a copy of this letter was
 [5] received by Charter Security, is that your
 [6] understanding?
 [7] **A:** It's my understanding, it has a
 [8] receive stamp by a B. Boehm.
 [9] **Q:** That's Ms. Barbara Boehm?
 [10] **A:** I think so.
 [11] **Q:** And she's shown actually as being
 [12] copied on the letter, is she not?
 [13] **A:** Yes, she is.
 [14] **Q:** And am I correct in understanding
 [15] that a copy of this letter was retained in
 [16] Charter Security's files?
 [17] **A:** Yes.
 [18] **Q:** On Exhibit 4 which is a document
 [19] that was produced by Met Life from its files,
 [20] the addressee Mr. Robert Foley, his name is
 [21] crossed out, do you see that?
 [22] **A:** Yes.
 [23] **Q:** And there is some handwriting up
 [24] at the top of the letter?
 [25] **A:** Yes.

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[1] **B. Fasman**
 [2] **Q:** Can you read it on your copy?
 [3] **A:** No, I can't.
 [4] **Q:** You can't make that out at all?
 [5] **A:** I can see that the first letter
 [6] is an R and the last 3 appear to be T E R but
 [7] — and those are two underlines but I really
 [8] can't read the rest.
 [9] **Q:** Okay. Now in his letter Mr. Noe
 [10] at Kemper states that he considers the
 [11] original annuity contract to be valid and
 [12] enforceable, do you see that?
 [13] **MR. CIAPCIAK:** Do you want her to
 [14] read the letter?
 [15] **MS. McQUAY:** You've read this
 [16] before, I take it, in preparation for
 [17] the deposition today?
 [18] **THE WITNESS:** Yes, I have.
 [19] **MR. CIAPCIAK:** I am just asking
 [20] if you —
 [21] **Q:** If you want to read it again, by
 [22] all means take your time and do so.
 [23] **MR. CIAPCIAK:** I am just asking
 [24] if you are looking for her to confirm
 [25] the exact language he used.

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Met Life Insurance Co., et al.**

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- [1] **Q:** Well, you see at the bottom of
[2] the letter he says, "I consider the original
[3] annuity contract valid and enforceable," do
[4] you see that?
[5] **A:** Yes, I do.
[6] **Q:** And the Charter Security policy
[7] number that he references in his letter is
[8] number 83A08153, correct?
[9] **A:** 83A08153, yes.
[10] **Q:** Which is the same number that we
[11] referred to earlier, that you identified
[12] earlier, which appears to be the number given
[13] to the annuity policy?
[14] **A:** That's correct.
[15] **Q:** Notwithstanding Mr. Noe's
[16] statement that he considers that original
[17] annuity contract to be valid and enforceable,
[18] am I correct in understanding that so far as
[19] you know and have been able to determine,
[20] Charter Security or Met Life did not keep a
[21] copy of that original annuity policy contract?
[22] **MR. CIAPCIAK:** I object to form.
[23] You may answer.
[24] **A:** We do not have a copy at this

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B. Fasman

- [1] point.
[2] **Q:** And you have not been able to
[3] find a copy?
[4] **A:** That's right.
[5] **Q:** And you don't know what happened
[6] to it?
[7] **A:** That's right.
[8] **Q:** Okay.
[9] **MR. CIAPCIAK:** You are asking her
[10] personal knowledge, right, because I
[11] believe some of the other exhibits
[12] indicate that somebody else kept it in
[13] their brief case.
[14] **MS. McQUAY:** I'm asking for her
[15] knowledge on behalf of Met Life as far
[16] as what's in Met Life's files.
[17] **MR. CIAPCIAK:** Sue, I'm not
[18] trying to be obstreperous here, I'm
[19] just trying to — our witness when we
[20] met yesterday I said, if she asks what
[21] you know, you have to be careful based
[22] upon — are you looking for her
[23] personal knowledge?
[24] **MS. McQUAY:** No, no I'm asking

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B. Fasman

- [1] for Met Life's knowledge.
[2] **MR. CIAPCIAK:** Okay. I just
[3] wanted to clarify that now just so that
[4] we don't go through the whole
[5] deposition of her saying she doesn't
[6] know.
[7] **MS. McQUAY:** I don't think
[8] there's been any mistake here, but let
[9] me be clear.
[10] **Q:** You're appearing here today as
[11] Met Life's witness and when I ask you
[12] questions I'm asking you as Met Life's
[13] witness.
[14] **A:** Okay.
[15] **Q:** Do we understand each other?
[16] **A:** Yes.
[17] **MR. CIAPCIAK:** I just want to
[18] clarify further that if she knows
[19] something based upon her review of the
[20] documents that she should note that.
[21] **THE WITNESS:** Okay.
[22] **Q:** At any rate, I want to turn back
[23] your attention to — let's go back. You
[24] indicated that you had no explanation for why

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B. Fasman

- [1] Charter Security or Met Life did not keep a
[2] copy of the original annuity contract in its
[3] files, correct?
[4] **A:** I indicated that I don't know why
[5] we don't have one.
[6] **Q:** Okay. Thank you. Directing your
[7] attention —
[8] **A:** However, Met Life doesn't have
[9] one because we took over from Charter whatever
[10] they gave us. I don't know why Charter didn't
[11] have one in their files to start with.
[12] **Q:** Okay, great. That's fine, that's
[13] all I needed to know. Well, let me ask you
[14] this. In the ordinary course, would you have
[15] expected that Charter Security would have
[16] retained under any circumstances the copy of
[17] the original annuity contract in its files?
[18] **A:** I don't know what Charter's
[19] procedures were.
[20] **Q:** In your experience would you have
[21] expected that they would have retained a copy
[22] in their files?
[23] **A:** Met Life does not maintain copies
[24] of contracts in our files, so I would not

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B. Fasman

[1] necessarily have expected that Charter would
[2] have a copy of this contract in its files.

[4] **Q:** Even though Mr. Noe is saying
[5] that he considers the original contract to be
[6] valid and enforceable, you would not expect
[7] under those circumstances that Charter
[8] Security would maintain a copy of that
[9] contract?

[10] **MR. CIAPCIAK:** Objection to the
[11] extent that you are asking her about —

[12] **Q:** Is that your understanding?

[13] **MR. CIAPCIAK:** Let me finish my
[14] objection. I've got to finish my
[15] objection.

[16] **MS. McQUAY:** I'm sorry, I thought
[17] you had.

[18] **MR. CIAPCIAK:** Objection to the
[19] extent that you're questioning her
[20] about her knowledge of document
[21] retention policies. She wasn't
[22] produced here to talk about document
[23] retention policies.

[24] **MS. McQUAY:** I'm asking her about
[25] her expectations based on her own

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B. Fasman

[1] experience for 25 years in this
[2] industry?

[4] **MR. CIAPCIAK:** Sure.

[5] **Q:** Mrs. Fasman?

[6] **A:** Met Life produces duplicate
[7] contracts rather than maintaining in each
[8] policy file a copy of the contract as issued.

[9] **Q:** How does it know what to produce
[10] as a duplicate contract?

[11] **A:** It's according to the number and
[12] the criteria and specifications of the
[13] contract in the system.

[14] **Q:** So in this circumstance where a
[15] contract has been issued and the owner of the
[16] contract says he considers it valid and
[17] enforceable, would you expect that in some
[18] form the information reflected in that
[19] original contract would have been maintained
[20] by Charter Security?

[21] **MR. CIAPCIAK:** I object to form.

[22] I don't believe John Noe is the owner.

[23] **Q:** You may answer.

[24] **A:** I believe that Charter would have
[25] been able to — might have been able to

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B. Fasman

[1] reproduce a copy of the contract.
[2] **Q:** From what source?

[4] **A:** Whatever their procedures were.
[5] It could have been manual pages in a file that
[6] they pulled out. It could have been a copy of
[7] the original contract, or it could have been a
[8] system generated contract. I don't know what
[9] their procedure was.

[10] **Q:** But you expect that information
[11] to have been retained in some form somewhere
[12] in their files, correct?

[13] **MR. CIAPCIAK:** I object to form.

[14] **A:** Yes, I would of.

[15] **Q:** And am I correct in understanding
[16] however that you in your search of files in
[17] this case have not been able to find any such
[18] information?

[19] **A:** I haven't been able to find a
[20] copy of the contract and not knowing what
[21] their procedures were or not having their
[22] systems any longer, I couldn't regenerate a
[23] copy of the contract.

[24] **Q:** Okay. Thank you. Directing your
[25] attention to what has been marked as Exhibit 5

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B. Fasman

[1] for the deposition, would you describe this
[2] document, please?

[4] (Exhibit 5, a letter to John L.
[5] Noe from John Liguori dated
[6] September 26, 1983 was introduced for
[7] identification.)

[8] **MR. CIAPCIAK:** Hang on, let me
[9] get it in front of her.

[10] **MS. McQUAY:** Sure.

[11] **A:** This appears to be a letter from
[12] Robert Liguori, counsel of Charter Security
[13] Life to John Noe of American Motorist.

[14] **Q:** Okay. In your understanding
[15] Mr. Liguori was a lawyer at Charter Security?

[16] **A:** Robert Liguori was the counsel.

[17] **Q:** I said Mr. Liguori, Robert
[18] Liguori was a lawyer at Charter Security is
[19] that your understanding?

[20] **A:** That's my understanding.

[21] **Q:** I'm sorry?

[22] **A:** That's my understanding.

[23] **Q:** I can't hear you.

[24] **A:** That is my understanding.

[25] **Q:** Okay. And is it your

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[1] **B. Fasman**
[2] understanding that Mr. Liguori was in-house
[3] counsel at Charter Security?
[4] **A:** Yes, that's my understanding
[5] based on his title at the bottom of the
[6] letter.
[7] **Q:** Do you know where Mr. Liguori is
[8] today?
[9] **A:** No, I do not.
[10] **Q:** Have you made any effort to
[11] determine his whereabouts?
[12] **A:** No, I have not.
[13] **Q:** To your knowledge, has anyone on
[14] behalf of Met Life made any effort to
[15] determine his whereabouts?
[16] **A:** Only from my conversations with
[17] counsel.
[18] **Q:** Do you have any understanding
[19] that his whereabouts have, in fact, been
[20] determined?
[21] **MR. CIAPCIAK:** If you gleaned
[22] anything from conversations from
[23] counsel you're instructed not to
[24] answer.
[25] **A:** I guess I'm not answering.

[1] **B. Fasman**
[2] **Q:** Do you know the basis for his
[3] assertion in that regard?
[4] **A:** Well, based on the next sentence
[5] which refers to the application, it would
[6] appear that that was the basis for that
[7] statement.
[8] **Q:** And does it also appear to you
[9] that when he makes that sentence this was
[10] information that was given to him by someone
[11] else?
[12] **A:** Well, it appears he also had a
[13] copy of a quotation sheet that showed a period
[14] certain without life option as well.
[15] **Q:** But my question was when he makes
[16] that statement, is that your understanding
[17] from looking at the letter, is this
[18] information that was given to him by someone
[19] else?
[20] **MR. CIAPCIAK:** And she was
[21] answering. Were you done?
[22] **Q:** I don't think she was answering
[23] responsively.
[24] **MR. CIAPCIAK:** I do.
[25] **A:** I think it was information he

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[1] **B. Fasman**
[2] **Q:** Okay. So just so the record is
[3] clear, any knowledge you have as to whether or
[4] not his whereabouts are known came from
[5] counsel and you won't reveal that knowledge,
[6] is that correct?
[7] **A:** Yes.
[8] **Q:** Okay. Do you know where
[9] Mr. Liguori obtained the information contained
[10] in his letter Exhibit 5?
[11] **A:** It appears that he got a copy —
[12] from the letter, got a copy of Barbara Boehm's
[13] — Mr. Noe's letter to Barbara Boehm. And I
[14] don't know, but he may have had some of the
[15] other documents as well.
[16] **Q:** In his letter Mr. Liguori states
[17] that there is nothing to indicate that
[18] anything other than a single premium immediate
[19] annuity with a 20-year certain period was
[20] applied for, do you see that?
[21] **MR. CIAPCIAK:** Which paragraph so
[22] I can point her to it?
[23] **Q:** It's the third paragraph on the
[24] first page, the first sentence.
[25] **A:** Yes.

[1] **B. Fasman**
[2] gleaned from documents as well as perhaps from
[3] Ms. Boehm.
[4] **Q:** Do you know where he got those
[5] documents?
[6] **A:** I don't know where he got them,
[7] but he refers to them in his letter.
[8] **Q:** Do you know who created them?
[9] **MR. CIAPCIAK:** Can you let her
[10] finish her answer?
[11] **MS. McQUAY:** I thought she had.
[12] **MR. CIAPCIAK:** No, you had
[13] interrupted her.
[14] **Q:** Do you have anything to add?
[15] **MR. CIAPCIAK:** You know what,
[16] you're jumping in before she finishes a
[17] sentence.
[18] **MS. McQUAY:** I'm sorry, because I
[19] can't see her, I mean, her voice falls
[20] and I think she has completed.
[21] If I'm cutting you off, I
[22] apologize.
[23] **Q:** Did you have something further to
[24] add?
[25] **A:** I'm sorry, but I lost my train of

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B. Fasman

[1] thought.

[2] **Q:** Okay. Now you said that, if I

[3] understood your testimony, that it appears

[4] that Mr. Liguori was looking at some

[5] documents, correct?

[6] **A:** Yes, it does appear that way.

[7] **Q:** Do you know where he got the

[8] documents?

[9] **A:** I don't know where he got the

[10] documents.

[11] **Q:** Do you know who created the

[12] documents?

[13] **A:** Well, it appears that some of

[14] the — I mean, it appears he was relying on

[15] several of the documents that we were looking

[16] at. So to the extent these letters were

[17] written by people, I believe that they were

[18] the ones who created the letters. And I don't

[19] know who filled in the application as I

[20] already said. And Charter I believe put

[21] together the contract.

[22] **Q:** Okay. Do you have anything else

[23] to add to your answer?

[24] **A:** No.

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B. Fasman

[1] **Q:** Okay. To your knowledge, as far

[2] as you know, was Mr. Liguori involved in the

[3] issuance of this annuity?

[4] **A:** It doesn't appear he was.

[5] **Q:** Okay. Now, when he says in his

[6] letter to Mr. Noe that the original contract

[7] was incorrectly typed as being 240 months

[8] certain and life thereafter, what's your

[9] understanding, was the basis of his assertion

[10] in that regard?

[11] **A:** The application.

[12] **Q:** When he said it was incorrectly

[13] typed, on what basis do you understand he was

[14] making the assertion that it was incorrectly

[15] typed?

[16] **A:** Well, I don't know but it might

[17] be because he was informed there was a

[18] clerical error so he may have inferred that

[19] was a typo.

[20] **Q:** Okay. Now, he also in his letter

[21] in Exhibit 5 refers to a copy of a quotation

[22] sheet from CSL to Mr. Foley?

[23] **A:** Yes.

[24] **Q:** Do you know where he obtained any

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B. Fasman

[1] such copy of a quotation sheet?

[2] **A:** I don't know where he got the

[3] copy of the quotation sheet.

[4] **Q:** So do you know who filled any

[5] such quotation sheet out?

[6] **A:** I don't know who filled the

[7] quotation sheet out, but generally they're

[8] generated by the issuing company.

[9] **Q:** Generated by whom?

[10] **A:** The company.

[11] **Q:** When you refer to the company,

[12] what are you talking about? I couldn't hear

[13] you, is the problem.

[14] **A:** The issuing company.

[15] **Q:** When you say they're generally

[16] filled out by the issuing company?

[17] **A:** Yes.

[18] **Q:** So that would be in this case

[19] Charter Security?

[20] **A:** Yes.

[21] **Q:** But you don't know in fact? Let

[22] me ask you, do you know when it was filled

[23] out?

[24] **MR. CIAPCIAK:** I object to form.

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B. Fasman

[1] **A:** No, I don't.

[2] **Q:** Do you know whether it was in

[3] fact sent to Mr. Foley?

[4] **A:** I don't know.

[5] **Q:** Do you know who sent it, if at

[6] all?

[7] **A:** I don't know who sent, no.

[8] **Q:** Did Charter Security or Met Life

[9] retain in its files a copy of any such

[10] quotation sheet?

[11] **A:** We don't have a copy, I mean at

[12] the time that this letter was written it

[13] appears there was a copy that was forwarded to

[14] Mr. Noe, but we don't have one now as far as I

[15] was able to find.

[16] **Q:** There is a reference to it, but

[17] you don't know whether, in fact, it was

[18] forwarded to Mr. Noe, is that correct?

[19] **A:** Right. I don't know other than

[20] it's referred to in this letter, and at the

[21] bottom of the letter it says enclosures.

[22] **Q:** Okay. Am I correct in

[23] understanding that Charter Security retained

[24] in its files, and Met Life retained in its

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[1] **B. Fasman**
 [2] files a copy of this letter, Exhibit 5, but it
 [3] did not retain a copy of any attachments such
 [4] as the alleged quotation sheet that went with
 [5] the letter, correct?
 [6] **MR. CIAPCIAK:** I object to form.
 [7] **A:** Right, I don't have access to the
 [8] quotation sheet, so it doesn't appear we have
 [9] one in our files.
 [10] **Q:** Okay. I would like the direct
 [11] your attention now to Exhibit 6.
 [12] (Exhibit 6, a letter to Robert
 [13] Liguori from John L. Noe dated
 [14] October 10, 1983 was introduced for
 [15] identification.)
 [16] **A:** Okay.
 [17] **Q:** Can you describe this document
 [18] please?
 [19] **A:** This is a letter that appears to
 [20] be from Mr. Noe to Mr. Liguori dated
 [21] October 10th, 1983.
 [22] **Q:** And this is a copy of a document
 [23] that came from Met Life's files?
 [24] **A:** Yes, it appears to be.
 [25] **Q:** Now, in his letter to Charter

[1] **B. Fasman**
 [2] was not there — or excuse me, was there when
 [3] Mr. Noe signed it?
 [4] **A:** Yes, I mean, based on the fact
 [5] that Mr. Noe was an employee in the claims
 [6] office and was very familiar with insurance
 [7] forms, I would have every expectation that he
 [8] wouldn't sign a form that didn't have all the
 [9] information necessary on it.
 [10] **Q:** If the information reflected in
 [11] the handwriting on the form, Exhibit 1, was
 [12] necessary why had it not been typed in?
 [13] **A:** I don't know.
 [14] **Q:** Addressing your attention to
 [15] Exhibit 7.
 [16] (Exhibit 7, a letter to B. Boehm
 [17] from John L. Noe dated October 12, 1983
 [18] was introduced for identification.)
 [19] **A:** Yes.
 [20] **Q:** Can you describe this document,
 [21] please?
 [22] **A:** This is a letter from John Noe to
 [23] Barbara Boehm, which is dated October 12th,
 [24] 1983.
 [25] **Q:** And this is a document that was

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[1] **B. Fasman**
 [2] Security Mr. Noe at Kemper states that
 [3] sections 14 and 15 of the application that he
 [4] signed were blank, do you see that?
 [5] **A:** Yes, I see that.
 [6] **Q:** Does Met Life have any reason to
 [7] believe that was not the case?
 [8] **A:** Other than from standard
 [9] procedures that it's unusual to sign a blank
 [10] form, I don't know.
 [11] **Q:** Well, you say other than it's
 [12] unusual to sign a blank form. In fact,
 [13] Exhibit 1, the annuity application wasn't
 [14] blank was it, it was filled in with a lot of
 [15] typing, correct?
 [16] **MR. CIAPCIAK:** I object to form.
 [17] **Q:** Is that correct Mrs. Fasman?
 [18] **A:** The typing, yes, well, I don't
 [19] know actually. He didn't refer to that.
 [20] **Q:** He referred to sections 14 and 15
 [21] which do not contain typed information but
 [22] contain handwritten information, correct?
 [23] **A:** That's right.
 [24] **Q:** Do you have — does Met Life have
 [25] any reason to believe that that handwriting

[1] **B. Fasman**
 [2] retained in the files of Charter Security and
 [3] Met Life?
 [4] **A:** Yes.
 [5] **Q:** Now, in his letter Exhibit 7,
 [6] Mr. Noe states that the original annuity
 [7] policy will be considered valid and
 [8] enforceable, do you see that?
 [9] **A:** Yes.
 [10] **Q:** What if any action did Charter
 [11] Security take after receiving this letter,
 [12] Exhibit 7?
 [13] **MR. CIAPCIAK:** She's looking at
 [14] me. She can refer to the other
 [15] exhibits.
 [16] **MS. McQUAY:** She can refer to
 [17] anything she needs to answer the
 [18] question.
 [19] **A:** I don't know. There is an
 [20] October 14th letter which seems to have been
 [21] received prior to the October 12th letter, so
 [22] I'm not really sure.
 [23] **Q:** You said the October 14th letter
 [24] appears to have been received — will you
 [25] state that again please, I didn't hear you.

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B. Fasman

[1] **A:** There is another letter.
 [2] **MR. CIAPCIAK:** I am going ask her
 [3] to refer to exhibit numbers.
 [4] **A:** There is another letter,
 [5] Exhibit 8, which has a October 14th date on
 [6] it —
 [7] **Q:** Yes.
 [8] **A:** — to Mr. Noe.
 [9] **Q:** Yes.
 [10] **A:** Which would appear to have been
 [11] dated after Mr. Noe's letter of October 12th.
 [12] However the October 12th letter also refers to
 [13] the October 14th letter, so I'm not sure what
 [14] was done after the October 12th letter.
 [15] **Q:** Okay. Other than the —
 [16] **MR. O'DRISCOLL:** Can we go off
 [17] the record for a moment, I think I have
 [18] something, just an observation that
 [19] might be helpful to the questioning.
 [20] **MS. McQUAY:** Certainly.
 [21] (Discussion off the record.)
 [22] **Q:** Mrs. Fasman, other than the
 [23] handwritten reference to 20-year certain in
 [24] paragraph 14 of Exhibit 1, did Charter
 [25]

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[1] Security, so far as you know, have any other
 [2] basis for it's assertions that the original
 [3] annuity contract that it issued to Kemper for
 [4] 20-year certain and life thereafter was
 [5] mistaken?
 [6] **MR. CIAPCIAK:** I object to the
 [7] form. Other than the other exhibit?
 [8] **MS. McQUAY:** No, no.
 [9] **Q:** Other than that reference to
 [10] 20-year certain in paragraph 14 in Exhibit 1,
 [11] does Charter Security have any other basis in
 [12] your understanding for its assertion that the
 [13] original annuity contract for 20-year certain
 [14] and life thereafter was mistaken?
 [15] **A:** Well, we have the application and
 [16] then we have this supplementary agreement.
 [17] **Q:** The supplementary agreement
 [18] was — I believe the document suggests were
 [19] issued sometime after the original contract,
 [20] correct?
 [21] **A:** Since it's not dated I'm not sure
 [22] when it was issued.
 [23] **Q:** Let me ask you this, tell me in
 [24] your understanding as far as Met Life is
 [25]

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B. Fasman

[1] concerned, what was the basis, the factual
 [2] basis on which Charter Security took the
 [3] position that the original annuity contract
 [4] issued to Kemper for 20-year certain and life
 [5] thereafter was mistaken?
 [6] **MR. CIAPCIAK:** I object to form.
 [7] Go ahead.
 [8] **A:** The basis was the application
 [9] which requested immediate annuity 20-year
 [10] certain.
 [11] **Q:** Anything else?
 [12] **MR. CIAPCIAK:** She's looking at
 [13] exhibits, so hang on.
 [14] **A:** Well, we don't have a copy of it.
 [15] There was a quotation down that Mr. Liguori
 [16] refers to in his letter indicating that that
 [17] was what the quote was, a 20-year certain
 [18] only.
 [19] **Q:** Anything else?
 [20] **A:** Nothing prior to the issue of the
 [21] original contract.
 [22] **Q:** Have you completed your answer?
 [23] **A:** Yes.
 [24] **Q:** Just to make sure, as far as Met
 [25]

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B. Fasman

[1] Life is concerned in this case, other than
 [2] what you have testified to just now, is there
 [3] any other basis upon which Met Life contends
 [4] that the original annuity contract issued for
 [5] 20-year certain and life thereafter was
 [6] mistaken?
 [7] **MR. CIAPCIAK:** I object to form.
 [8] **A:** Other than the exhibits, no, this
 [9] is what we have.
 [10] **Q:** Okay. Now, did Charter Security
 [11] or Met Life ever offer to return Kemper's
 [12] money to it if there was a mistake here?
 [13] **A:** I don't know.
 [14] **Q:** Do you have any reason to believe
 [15] that they did?
 [16] **A:** I don't have any reason to
 [17] believe they did or didn't.
 [18] **Q:** You don't know one way or another
 [19] what happened, correct?
 [20] **A:** That's right.
 [21] **Q:** Did Charter Security or Met Life
 [22] ever do anything to try to resolve this matter
 [23] after this exchange of letters in October of
 [24] 1983?
 [25]

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[1] **B. Fasman**

[2] **A:** I don't know.

[3] **Q:** You are not aware of anything,

[4] correct?

[5] **A:** I'm not aware of anything.

[6] **Q:** Okay. I would like to direct

[7] your attention to what has previously been

[8] marked as Exhibit 10.

[9] (Exhibit 10, a document Bates

[10] Stamped 32 was introduced for

[11] identification.)

[12] **A:** Yes.

[13] **Q:** Can you describe this document,

[14] please?

[15] **A:** It appears to be a phone record

[16] of a conversation between Katherine Dimon and

[17] Laura Green.

[18] **Q:** This came from Met Life's files?

[19] **A:** Yes.

[20] **Q:** Am I correct in understanding

[21] that this document indicates that on June 5th,

[22] 2003 Katherine Dimon requested a copy of the

[23] annuity contract?

[24] **A:** Yes.

[25] (Exhibit 11, a letter to Dennis

[1] **B. Fasman**

[2] **A:** Yes.

[3] **Q:** — you would not send him a copy

[4] upon his request?

[5] **A:** That's generally our procedure,

[6] yes.

[7] **Q:** Did you ever explain that to

[8] Mr. Dimon?

[9] **A:** I personally did not, and I don't

[10] have a letter that would indicate that that

[11] was explained. But I don't know.

[12] **Q:** So, so far as you know you are

[13] not aware that Met Life or anyone at Met Life

[14] ever explained that to Mr. Dimon?

[15] **MR. CIAPCIAK:** I object to form.

[16] **A:** I'm not aware of, right.

[17] **MS. McQUAY:** I have no further

[18] questions.

[19] **THE WITNESS:** Can we take another

[20] break?

[21] **MS. McQUAY:** Certainly.

[22] (Recess: 11:22 a.m. until

[23] 11:26 a.m.)

[24] **MR. CIAPCIAK:** Back on the

[25] record.

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[1] **B. Fasman**

[2] Dimon from Sandy Franklin dated June 9,

[3] 2003 was introduced for

[4] identification.)

[5] **Q:** And directing your attention to

[6] what has been marked as Exhibit 11, is

[7] Exhibit 11 is a response to Mrs. Dimon's

[8] request?

[9] **A:** Yes, it appears to be.

[10] **Q:** In Exhibit 11, your company

[11] indicates that it is unable to send a copy of

[12] the contract to Mr. Dimon, correct?

[13] **A:** Yes.

[14] **Q:** Why was Met Life unable to send a

[15] copy of the contract to Mr. Dimon?

[16] **A:** Well, we don't have a copy of the

[17] contract in our file, but it's also Met Life's

[18] policy not to send a copy of the policy to

[19] anyone but the owner.

[20] **Q:** Who is the owner in this case?

[21] **A:** American Motorist Insurance

[22] Company.

[23] **Q:** So even though Mr. Dimon was the

[24] annuitant, if you will — do I have that word

[25] correct?

[1] **B. Fasman**

[2] **THE WITNESS:** I would just like

[3] to clarify or correct my answer from

[4] before. I reviewed the exhibits again

[5] and we actually did communicate with

[6] Mr. Dimon about why we couldn't give

[7] him an annuity contract and it's

[8] explained in Exhibits 11 and 13.

[9] **BY MS. McQUAY:**

[10] **Q:** With regard to Exhibit 11, what's

[11] the explanation?

[12] **A:** Well, "Since your annuity

[13] contract has expired, we are unable to provide

[14] you with a duplicate contract."

[15] **Q:** And what do you understand that

[16] to mean, in terms of why you can't give him a

[17] contract, a copy of the contract?

[18] **A:** Once a contract is off of our

[19] system we can't produce another contract, a

[20] duplicate contract. We're just not able to

[21] should we have had the contract available.

[22] (Exhibit 13, a letter to

[23] Dennis Dimon from Sandy Franklin, dated

[24] July 9, 2003 was introduced for

[25] identification.)

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B. Fasman

[1] **Q:** Okay. And Exhibit 13 that you
[2] referenced, this is a letter to Mr. Dimon from
[3] Met Life in July of 2003?
[4] **A:** Yes.
[5] **Q:** This came from Met Life's files?
[6] **A:** Yes, it did.
[7] **Q:** And in this case you again state
[8] you're unable to provide him with a contract,
[9] correct?
[10] **A:** Yes, we do.
[11] **Q:** You give him an explanation as to
[12] why you can't?
[13] **A:** Yes, we explain it was a contract
[14] issued as a settlement from another company.
[15] **Q:** Yes. But any where, do you tell
[16] him why you can't give him a copy?
[17] **A:** It eludes to the fact that
[18] American Motorists is the person who took out
[19] the contract.
[20] **Q:** Okay. One final bit of
[21] housekeeping in this assessment, during the
[22] course of your testimony you referred to what
[23] has previously been marked as Exhibit 8 for
[24] the deposition. I don't believe we've
[25]

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B. Fasman

[1] formerly introduced it so I would like to do
[2] so now. Directing your attention to
[3] Exhibit 8, can you describe the document,
[4] please?
[5] (Exhibit 8, a letter from John L.
[6] Noe from B. Boehm dated October 14,
[7] 1983 was introduced for
[8] identification.)
[9] **A:** This is a letter from Barbara
[10] Boehm to Mr. Noe dated October 14th, 1983.
[11] **Q:** This was a document that came
[12] from Met Life's files?
[13] **A:** Yes, it was.
[14] **MS. McQUAY:** Thank you, I have no
[15] further questions.
[16] **EXAMINATION BY MR. DeWICK:**
[17] **Q:** Hi, Mrs. Fasman, this is Jed
[18] DeWick. I just have one question. You
[19] indicated earlier that part of your duties are
[20] to perform calculations with respect to
[21] annuities, is that correct?
[22] **A:** Calculations in general, yes.
[23] **Q:** Okay. Have you personally
[24] performed any calculations with respect to the
[25]

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B. Fasman

[1] annuity in question here?
[2] **A:** I did do some calculations to see
[3] different costs.
[4] **Q:** Can you please just describe the
[5] calculations you did and what you found?
[6] **A:** I did a calculation to see what a
[7] 20-year certain annuity with the 3 percent
[8] increase annually would cost using Met Life
[9] pricing assumptions from 1983, May 1983. And
[10] that would have cost \$1,450 per month starting
[11] — as the starting amount, and that would have
[12] cost about \$180,000. And to compare that to
[13] what the pricing was with the Charter annuity.
[14] And I did other calculations as
[15] well.
[16] **Q:** Let me just ask you what you
[17] meant there when you said the Charter annuity.
[18] What were the terms of the annuity that you
[19] are referring to when you say Charter annuity?
[20] **A:** 20-year certain in life with a
[21] 3 percent increase annually starting — well,
[22] that one was 14 — 1,450.45 per month. But
[23] the quotes I did was \$1,450.
[24] **Q:** Did you do a calculation of what
[25]

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B. Fasman

[1] the 20-year certain in life thereafter annuity
[2] would approximately be?
[3] **A:** I did a calculation of a 20-year
[4] certain in life annuity where during the first
[5] 20 years there was a 3 percent annual
[6] increase, and after that the amount was flat
[7] for life. And the cost of that was \$270,900.
[8] **Q:** And you are speaking of, when you
[9] say the cost, you are talking about a one time
[10] premium?
[11] **A:** A single premium, yes. Using
[12] May '83 rate, 1983 rates.
[13] **Q:** Do any document exist that
[14] reflect these calculations?
[15] **A:** I took some notes.
[16] **Q:** Are you in possession of these
[17] notes?
[18] **A:** Yes, I am.
[19] **Q:** Did you refer to any document
[20] when you were making this calculation?
[21] **MR. CIAPCIAK:** I object on form.
[22] **A:** I had requested from my attorney
[23] quotes to get these numbers.
[24] **Q:** Can you repeat that? I didn't
[25]

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[1] *B. Fasman*
[2] catch it.
[3] A: I had request from my attorney
[4] quotes from our annuity area to get these
[5] numbers.
[6] Q: Your attorney, you mean Met Life?
[7] MR. CIAPCIAK: That would be me.
[8] Q: In-house?
[9] A: Yes.
[10] Q: Is the document that you referred
[11] to and the notes you took, these documents are
[12] still in your possession?
[13] A: The notes are in my possession.
[14] Q: What about the documents you
[15] referred to, do you know where those are?
[16] MR. CIAPCIAK: I object to the
[17] form. What document are you referring
[18] to? The source? Or —
[19] MR. DeWICK: Whatever documents
[20] Mrs. Fasman reviewed to make these
[21] calculations.
[22] MR. CIAPCIAK: Okay, so the
[23] source of that.
[24] A: I have the answers. I never
[25] physically got documents that had quotes or

[1] *B. Fasman*
[2] the annuities that we just discussed, using my
[3] 1983 rates. And they ran their computer
[4] program and gave me back the answers.
[5] Q: I have nothing further. Thank
[6] you.
[7] EXAMINATION BY MR. KEANE:
[8] Q: Mrs. Fasman, My name is Brian
[9] Keane and I represent Dennis Dimon. I just
[10] have a couple of questions. Again, I know you
[11] heard this from attorney McQuay, but if you
[12] don't understand a question please let me know
[13] and I will rephrase it.
[14] Going back to the information you
[15] were just giving, when did you do these
[16] calculations?
[17] A: I requested them, I believe it
[18] was August of 2005.
[19] Q: That's when you did the
[20] calculations in August of 2005?
[21] A: I didn't do the calculations. I
[22] had them done.
[23] Q: That they be done in August of
[24] 2005?
[25] A: Yes.

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[1] *B. Fasman*
[2] anything other than the numbers.
[3] Q: You just received the figures
[4] verbally?
[5] A: No, I got an e-mail with them.
[6] Q: Do you still have that e-mail?
[7] MR. CIAPCIAK: You know what, I
[8] am going to instruct her not to answer.
[9] The e-mail was from counsel.
[10] Q: Okay.
[11] MR. CIAPCIAK: I think what you
[12] are looking for is the source of the
[13] number. I don't want to mislead you
[14] here. Are you looking for what she
[15] looked at to get those numbers?
[16] MR. DeWICK: Yes, I'm just trying
[17] to figure out basically —
[18] MR. CIAPCIAK: That you may
[19] answer.
[20] MR. DeWICK: Just to make sure
[21] that I covered the universe of
[22] information that was considered.
[23] A: I called our quote unit and asked
[24] them to do quotes using 1983 numbers —
[25] assumptions and to get the single premium for

[1] *B. Fasman*
[2] Q: What did you use in terms of life
[3] expectancy for Mr. Dimon when you did these
[4] calculations?
[5] A: We did a standard life
[6] assumption. I don't know what is in — I
[7] don't know what's built into the program.
[8] There was nothing specifically changed to
[9] reflect anything about Mr. Dimon.
[10] Q: Is the life expectancy a big
[11] factor in determining those types of numbers?
[12] A: It is a big factor in determining
[13] the cost of a life annuity, yes.
[14] Q: Wouldn't you need to have more
[15] information about Mr. Dimon to determine his
[16] life expectancy to come to a premium price?
[17] A: For the purpose of this analysis
[18] what we were doing was, what it would have
[19] cost, an estimate of what it would have cost
[20] from Met Life to purchase, to provide the
[21] annuity, the 20-year certain annuity and the
[22] 20-year certain in life annuity in 1983. And
[23] at that time I have no reason to understand
[24] that there was special pricing done for
[25] Mr. Dimon.

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B. Fasman

[1] *B. Fasman*
 [2] Q: You mentioned earlier in your
 [3] testimony a woman by the name of Teresa
 [4] Mannino, is that right?
 [5] A: Yes.
 [6] Q: Who told you that Ms. Mannino
 [7] would have information regarding Charter
 [8] Security Life?
 [9] MR. CIAPCIAK: I object to form.
 [10] A: I just, well, my counsel
 [11] mentioned her but. But I happened to have
 [12] worked very closely with her.
 [13] Q: Was Ms. Mannino a former employee
 [14] of Charter Security Life?
 [15] A: No, she was not.
 [16] Q: Do you know approximately when
 [17] Met Life took over Charter Security Life?
 [18] A: In the mid '80s, I believe.
 [19] Q: You mentioned that this annuity
 [20] application was an immediate annuity. Can you
 [21] tell me what that means?
 [22] A: Generally, an immediate annuity
 [23] refers to an annuity which provides a stream
 [24] of payments, the first of which is made within
 [25] a year of the purchase date.

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B. Fasman

[1] *B. Fasman*
 [2] Q: As you look at Exhibit 1, can you
 [3] tell me the purchase date of that annuity?
 [4] A: I can tell you the application
 [5] date.
 [6] Q: Did you give me the date?
 [7] A: I said, I can tell you the
 [8] application date.
 [9] Q: I was waiting for that, I
 [10] apologize. What is that date?
 [11] A: May 4th, 1983.
 [12] Q: You mentioned earlier something
 [13] called a quotation sheet. What is that?
 [14] A: Typically in the industry when an
 [15] a immediate annuity is being sold there is a
 [16] quotation done to show how much benefit can be
 [17] provided for a single premium or how much a
 [18] specific benefit costs.
 [19] Q: You testified earlier that you do
 [20] not have a quotation sheet for Mr. Dimon's
 [21] annuity, is that right?
 [22] A: That's right.
 [23] Q: If you look at Exhibit 1 again,
 [24] and you look down on the bottom right side, it
 [25] says signature of annuitant. Can you read

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B. Fasman

[1] *B. Fasman*
 [2] that name?
 [3] A: It appears to be Dennis Dimon.
 [4] Q: And you testified earlier that
 [5] there was an annuity application and there
 [6] also was a supplementary agreement. And I
 [7] think you testified that the supplementary
 [8] agreement basically explained what the annuity
 [9] would be, is that right?
 [10] MR. CIAPCIAK: Objection.
 [11] A: I think that's what I said. It
 [12] would explain the payments.
 [13] Q: Can you tell me the timing or the
 [14] difference in timing for the annuity
 [15] application and the supplementary agreement?
 [16] A: I don't know when the
 [17] supplementary agreement was produced.
 [18] Q: I am asking a question based on
 [19] your experience. Is the supplementary
 [20] agreement usually offered after the annuity
 [21] application?
 [22] A: Generally, the annuity
 [23] application is taken, and then a contract is
 [24] issued subsequent to the annuity application
 [25] being taken.

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B. Fasman

[1] *B. Fasman*
 [2] Q: I believe you testified you do
 [3] not have the actual contract for Mr. Dimon's
 [4] annuity, is that right?
 [5] MR. CIAPCIAK: Objection.
 [6] A: I don't have the contract, right.
 [7] But I have the application and the
 [8] supplementary agreement, that's what I have.
 [9] To me the supplementary agreement is the
 [10] contract and it explains what the terms are.
 [11] MR. KEANE: If you would just
 [12] give me one minute.
 [13] Q: Mrs. Fasman, that's all I have,
 [14] thank you.
 [15] MS. McQUAY: Tim, do you have any
 [16] questions?
 [17] MR. O'DRISCOLL: No, I have no
 [18] questions.
 [19] MS. McQUAY: I have just a couple
 [20] further Mrs. Fasman.
 [21] BY MS. McQUAY:
 [22] Q: Just a couple of questions about
 [23] these calculations that you asked to be done
 [24] back in August of 2005.
 [25] A: Yes.

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**Barbara Fasman
Vol. 1, May 10, 2006**

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[1] **B. Fasman**
[2] **Q:** Am I correct in understanding
[3] that you supplied certain assumptions that
[4] should be used including the amount the
[5] annuity should payout each month, the age of
[6] the annuitant and so forth?
[7] **MR. CIAPCIAK:** I object to form.
[8] **Q:** Is that correct?
[9] **A:** I did, yes.
[10] **Q:** Okay. And you asked that someone
[11] calculate what the premium would be based on
[12] such assumptions using Met Life's rates for
[13] 1983?
[14] **A:** Yes.
[15] **Q:** Now, do different companies have
[16] different rates?
[17] **A:** Yes.
[18] **Q:** Do you know what Charter
[19] Security's rates were back in 1983?
[20] **A:** No, I don't.
[21] **Q:** All right. So using your
[22] calculation you were not using whatever rates
[23] Charter Security might have been using,
[24] correct?
[25] **MR. CIAPCIAK:** Objection.

[1] **B. Fasman**
[2] different companies. It's what expenses they
[3] billed into the single premium so that they
[4] can continue to service the annuity going
[5] forward.
[6] **MS. McQUAY:** I have no further
[7] questions.
[8] **MR. DeWick:** I have no further
[9] questions.
[10] (Time noted is 11:50 a.m.)
[11]
[12]
[13]
[14]
[15]
[16]
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[21]
[22]
[23]
[24]
[25]

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[1] **B. Fasman**
[2] **A:** Right, I don't know what they
[3] were using so I couldn't use them. But I
[4] can't say that we didn't use them. They could
[5] have been the same coincidentally.
[6] **Q:** You just don't know?
[7] **A:** Right.
[8] **Q:** What are some of the factors that
[9] effect the variability of the different rates
[10] charged by different companies?
[11] **A:** The assumptions with regard to
[12] life expectancy, interest, expenses.
[13] **Q:** Life expectancy and what else?
[14] **A:** Interest, expenses, taxes,
[15] gender. I can't think of anything else
[16] offhand.
[17] **Q:** So different companies use
[18] different assumptions regarding those items?
[19] **A:** They can, yes.
[20] **Q:** Okay. And in terms of expenses,
[21] to the extent that that's a variable, does
[22] that depend upon the — are you referring to
[23] the different expenses of different companies?
[24] **A:** I am referring to what
[25] expenses — I guess it's the expenses of

[1] **B. Fasman**
[2] I, the witness herein, having read
[3] the foregoing testimony do hereby
[4] certify it to be a true and correct
[5] transcript, subject to the corrections,
[6] if any, shown on the attached page.
[7]
[8]
[9]
[10]
[11] **BARBARA FASMAN**
[12]
[13]
[14]
[15]
[16] Subscribed and sworn to
[17] before me this _____ day
[18] of _____, 2006.
[19]
[20]
[21]
[22]
[23]
[24]
[25]

Barbara Fasman

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[1]
 [2] CERTIFICATE
 [3] STATE OF NEW YORK)
 [4] :ss.:
 [5] COUNTY OF NEW YORK)
 [6]
 [7] I, Vicky Galitsis, a Certified
 [8] Shorthand Reporter and Notary Public within
 [9] and for the State of New York, do hereby
 [10] certify:
 [11] That, BARBARA FASMAN, the witness whose
 [12] deposition is hereinbefore set forth, was duly
 [13] sworn by me and that such deposition is a true
 [14] record of the testimony given by such witness.
 [15] I further certify that I am not related
 [16] to any of the parties to this action by blood
 [17] or marriage that I am in no way interested in
 [18] the outcome of this matter.
 [19] In witness whereof, I have hereunto set
 [20] my hand this 15th day of May 2006.
 [21]
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Lawyer's Notes

Black Ink

83A08153

ANNUITY
LOCATION

CHARTER SECURITY LIFE INSURANCE COMPANY, NEW YORK, 720 FIFTH AVENUE, NEW YORK, N.Y. 10019

Name of Annuitant (please print) <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female Dennis J. Dixon		9. Type of Contract Single Premium-Deferred Annuity
Date and Place of Birth 12/9/59 So. Kingstown, RI		10. Single Premium Amount \$ 175,000.
Residence (No., Street, City, State and Zip Code) Laurel Lane, West Kingston, RI 02892		11. Maturity Age <input type="checkbox"/> 65 <input type="checkbox"/> 70% <input type="checkbox"/> Other: Immediate 6/15/83
Business Address (include Name of Employer)		12. Will this annuity replace or change any existing life insurance or annuity contract? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If yes, give name of company, policy number, and plan of life insurance or annuity.)
Mail Notices to <input type="checkbox"/> Residence <input type="checkbox"/> Business <input type="checkbox"/> Owner		EXHIBIT tabbies /
Social Security No. 036-44-8733		
Owner (If other than Proposed Annuitant) Name: American Motorists Insurance Co. Relationship: Address: Social Security Tax Payer I.D. No. 36-0727430		13. Is this contribution for a tax qualified plan? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If so, contract will be issued with a limitation on transferability to conform with IRS regulations. (Check appropriate box for type of qualified plan.) <input type="checkbox"/> L.R.A. Rollover <input type="checkbox"/> Corporate pension or profit sharing plan <input type="checkbox"/> T.S.A. Exchange <input type="checkbox"/> Terminal Funding <input type="checkbox"/> H.R. 10 Exchange <input type="checkbox"/> Other <input type="checkbox"/> H.R. 10
Contingent Owner		14. Special Requests Immediate Annuity 20yr Certain - 3% interest \$175,000 = 1456.45 per month (first) - 70
Beneficiary and Relationship Primary: Katherine I. Dixon. Contingent: Jessica I. Dixon. - Daughter Rebecca Lee Dixon. - Daughter		15. Amendments and Corrections (For Home Office use only) Quote Number S0113

I, the undersigned, represent(s), to the best of his (her) knowledge and belief, that the foregoing statements and answers are true, correct, and correctly recorded and agree(s) to be bound by the statements and answers made or to be made in this application. I, the undersigned further expressly agree(s) as follows: This application and any policy issued in consequence of this application shall constitute the entire contract. No agent is authorized to make or modify contracts, to waive any of the Company's rights or requirements or to bind the Company by any promise, representation or information, unless the same be in writing, submitted to the Company, and made a part of such policy.

2. Acceptance of any contract(s) issued on the basis of this application shall constitute a ratification and acceptance of any change, correction, addition or amendment noted by the Company in the "Amendments and Corrections" section of the application, except that in those jurisdictions where it is required any change in amount or benefits shall require a written consent by the Proposed Annuitant and by the Applicant if other than the Proposed Annuitant.

Witnessed by this 4th day of May 1983

Agent Signature (1) [Signature] Code 621-61

Name Print Name of Agent (1) E. S. [Signature]

Agent Signature (2) _____ Code _____

Name Print Name of Agent (2) _____

Signature of Annuitant Dennis J. Dixon

Applicant if other than Annuitant [Signature]

By [Signature] Signature and Title

D. J. Witter Reynolds
Please Print Name of General Agency

0000100

SUPPLEMENTARY AGREEMENT

(No. SC126.)

by Charter Security Life Insurance Company (New York) on the life of Dennis Dimon issued
 the undersigned hereby requests that the aggregate net proceeds payable under said policy(s) as of the termination date be paid
 to the payee designated in, and in the order and manner provided in, the following Table or Tables and in the General Provisions
 of this Agreement.

The undersigned surrenders said policy(s) to the Insurance Company, and, concurrently herewith, revokes any beneficiary designa-
 tion and any election of settlement heretofore made under the said policy(s).

PAYEE	MANNER OF PAYMENT	PAYABLES
-------	-------------------	----------

TABLE I

SECTION ONE - PRIMARY PAYEE

Dennis Dimon
 Laurel Lane
 West Kingston, RI 02892

Monthly payments in the amount of
 \$1,450.45, increasing 3% annually,
 for a period of 240 months only.

SECTION TWO-CONTINGENT PAYEE

Katherine J. Dimon, wife

In the same manner as the Primary
 Payee, for the specified period.

0000020

tabbies

EXHIBIT

2



Charter Security Life Insurance Company (New York)
720 Fifth Avenue
New York, New York 10019
Telephone 212-397-2550

CERTIFIED MAIL RETURN RECEIPT REQUESTED

July 14, 1983

Mr. Kurt Snyder
Dean Witter Reynolds
111 E. Onondaga Street
Syracuse, New York 13202

RE: Dennis Dimon
Policy #83A08153
NSC 1126

Dear Kurt:

As outlined in our telephone conversation, due to a clerical error the option indicated on the above supplementary contract for Dennis Dimon was incorrectly typed as 240 months certain and life thereafter instead of 240 months only.

Enclosed is a new contract correctly stating the option elected. Please be advised that the former contract mailed to Robert Foley is null and void. I would appreciate it if you will return that contract to my attention.

Thank you for your cooperation and again, my apologies for this oversight

Sincerely,


Barbara Boehm, Vice President
Policyowner Service Department

BAB:aw

Enc.



000021



Lumbermens Mutual Casualty Company • American Motorists Insurance Company
American Manufacturers Mutual Insurance Company • American Protection Insurance Company

Long Grove, IL 60049 • 312/540-2000

August 12, 1983

Mr. Robert A. Foley
Dean Witter Reynolds, Inc.
One Boston Place
Boston, Massachusetts 02108

Dear Mr. Foley:

DENNIS DIMON
CHARTER SECURITY POLICY NO: 83 A 08153
OUR FILE NO: 399 LM 106125-Z

I received the replacement policy issued by Charter Security Life Insurance Company (New York) changing the terms of the annuity from 240 months certain and life thereafter to 240 months certain only.

I am advised by Mr. Hughes of Lattie Associates that your quotation was to provide an annuity which would pay \$1,450.45 per month for the first year increasing annually at a rate of 3% compounded annually for 240 months certain and life thereafter for a single premium of \$175,000. This was the benefit to be provided under the terms of a general release and settlement agreement approved by Judge Pettine of the United States District Court for the District of Rhode Island.

The agreed upon premium was paid and a policy issued which is now in the files of the contract owner, American Motorists Insurance Company, providing benefits required by the release, settlement agreement and court order. I consider the original annuity contract valid and enforceable and will retain it in our files.



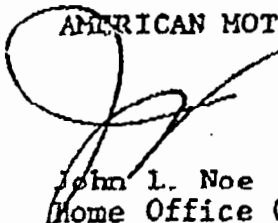
000025

Mr. Robert A. Foley
August 12, 1983
-2-

I intended to return the replacement contract issued by
Barbara Boehm of Charter Security, but it was lost with
my briefcase on August 11, 1983.

Very truly yours,

AMERICAN MOTORISTS INSURANCE COMPANY



John L. Noe
Home Office Claim

JLN:bw

cc: Ms. Barbara Boehm
Vice President
Charter Security Life Insurance Company
(New York)
720 Fifth Avenue
New York City, New York 10019

Mr. Roger Hughes
Lattie Associates, Attorneys
30-31 Union Wharf
Boston, MA 02109

000026



Charter Security Life Insurance Company (New York)
720 Fifth Avenue
New York, New York 10019
Telephone 212-397-2350

September 26, 1983

Mr. John L. Noe
Home Office Claim
American Motorists
Insurance Company
Long Grove, Illinois 60049



Re: Dennis Dimon - Policy No. 83 A 08153
Your File No. 399 LM 106125-2

Dear Mr. Noe:

I am in receipt of your letter to Barbara Boehm, Vice President of Charter Security Life Insurance Company (New York ("CSL(NY)"), regarding the annuity policy (Policy No. 83 A 08153) issued by CSL(NY) to Dennis Dimon.

According to information you received from Mr. Hughes of Lattie Associates, Robert Foley of Dean Witter Reynolds, Inc., allegedly offered to provide Mr. Dimon with a CSL(NY) annuity which would pay \$1,450.45 per month for the first year increasing annually at a rate of 3% compounded annually for 240 months certain and life thereafter based on a single premium of \$175,000.00.

Contrary to the information you received from Mr. Hughes, there is nothing to indicate that anything other than a single premium immediate annuity with a 20 year (i.e., 240 months) certain period was applied for. As you can see from the attached copy of Mr. Dimon's application, which American Motorists Insurance Company signed as applicant, a 20 year certain policy was applied for. I have also attached for your reference, a copy of a quotation sheet from CSL(NY) to Mr. Foley which clearly shows that CSL(NY)'s quote was based on the issuance of a certain period annuity without a life option. As previously explained by Ms. Boehm in her letter to Mr. Kurt Snyder of Dean Witter Reynolds dated July 14, 1983 (see enclosed copy), the option indicated on the Supplementary Contract originally sent to Dean Witter Reynolds on June 17, 1983 for delivery to your office was incorrectly typed as a 240 month certain and life thereafter annuity instead of 240 months only. Again, on behalf of CSL(NY), I apologize for this oversight.

000027

Mr. John L. Noe
Page 2
September 26, 1983

Based on the foregoing, CSL(NY) guarantees to continue to pay Mr. Dimon under the terms of his policy a \$1,450.45 monthly annuity during the first policy year, which will increase annually at a rate of 3% compounded annually for 240 months certain. No payments will be made beyond the expiration of the 240 month period. Accordingly, the original Supplementary Contract mailed to Robert Foley and in your possession is null and void. I would appreciate your returning that contract to:

Barbara Boehm
Vice President
Policyowner Service Department
Charter Security Life
Insurance Company (New York)
720 Fifth Avenue
New York, New York 10019

By copy of this letter, I am instructing Ms. Boehm to send to your attention a correct copy of the Supplementary Contract for Dennis Dimon which you stated was lost with your briefcase on August 11, 1983.

If I can be of any further assistance in this matter, please do not hesitate to contact me at the above address.

Very truly yours,

Robert Liguori
Counsel

RL/spf
Enclosures

cc: Ms. Barbara Boehm

Mr. Robert A. Foley
Dean Witter Reynolds, Inc.
One Boston Place
Boston, Massachusetts 02108

Mr. Roger Hughes
Lattie Associates, Attorneys
30-31 Union Wharf
Boston, MA 02109

000026



Lumbermens Mutual Casualty Company • American Motorists Insurance Company
American Manufacturers Mutual Insurance Company • American Protection Insurance Company

Long Grove, IL 60049 • 312/540-2000

October 10, 1983

Mr. Robert Liguori, Counsel
Charter Security Life Insurance
Company (New York)
720 Fifth Avenue
New York, New York 10019



Dear Mr. Liguori:

DENNIS DIMON
CHARTER SECURITY POLICY: 83A08153
OUR FILE NO: 399 LM 106125-Z


In reply to your September 26, 1983, Sections 14 and 15 of the application that I signed were blank. The entries now appearing were filled in after I returned the signed application.

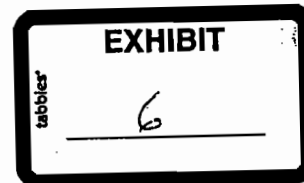
The original annuity policy received was for a term of 240 months certain and life thereafter as ordered and agreed upon between Mr. Hughes and Mr. Foley. Your agent, Mr. Foley further confirmed this to me by telephone in April, 1983. May I suggest you contact him to verify this?

I intend to retain the original policy in our files and consider it to be valid and enforceable.

Very truly yours,

AMERICAN MOTORISTS INSURANCE COMPANY


John L. Noe
Home Office Claim



JLN:ml

cc: Mr. Robert A. Foley
Dean Witter Reynolds, Inc.
One Boston Place
Boston, MA 02108

Mr. Roger Hughes
Latti Assoc., Attorneys
30-31 Union Wharf
Boston, MA 02109

cc: Ms. Barbara Boehm
Vice President
→ Policyowner Service Dept.
Charter Security Life
Insurance Co. (New York)
720 Fifth Avenue
New York, NY 10019

000029



Lumbermens Mutual Casualty Company • American Motorists Insurance Company
American Manufacturers Mutual Insurance Company • American Protection Insurance Company

Long Grove, IL 60049 • 312/540-2000

October 12, 1983

Ms. Barbara Boehm, Vice President
Policyowner Service Department
Charter Security Life Insurance Company (New York)
720 Fifth Avenue
New York, New York 10019

Dear Ms. Boehm:

RE: DENNIS DIMON
CONTRACT NO. 83408153
OUR FILE NO. 399 LM 116125 Z

In reponse to your October 14, 1983 I reject and return
herewith the Supplementary Agreement and General Provisions
attached thereto. The original annuity policy will be re-
tained in the files of American Motorists Insurance
Company and considered valid and enforceable.

Very truly yours,

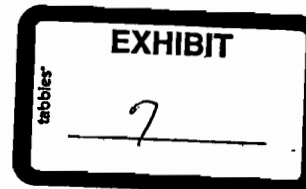
AMERICAN MOTORISTS INSURANCE COMPANY

John L. Noe
Home Office Claims

JLN/lz

cc: Mr. Roger Hughes
Latti Associates, Attorneys
30-31 Union Wharf
Boston, MA 02109

cc: Mr. Robert A. Foley
Dean Witter Reynolds, Inc.
One Boston Place
Boston, MA 02108



000024



Charter Security Life Insurance Company (N.Y.)
720 Park Avenue
New York, New York 10019
Telephone 212-367-2350

October 14, 1983

Mr. John L. Noe
Home Office Claim
American Motorists Insurance Company
Long Grove, IL 60049

Re: Dennis Dimon
Contract No. 83A08153
Your File No. 399LM10612 -2

Dear Mr. Noe:

As was indicated in Mr. Robert Ligouri's letter of September 26, 1983, we are enclosing a corrected Supplementary Contract in regards to Mr. Dimon's Single Premium Immediate Annuity. This contract has been updated to reflect monthly payments for a period of 240 months only.

Please see that the original Supplementary Contract, which was mailed to Robert Foley, is returned to me, as that contract is no longer valid.

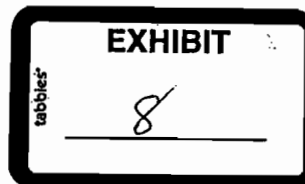
Please accept our apologies for any inconvenience this matter has caused you

Sincerely,


Barbara Boehm, Vice President
Policyowner Service Department

BAB/cg

Enclosure



000023

DAVID B KAPLAN
THE KAPLAN BOND GROUP
ATTORNEYS AT LAW
88 BLACK FALCON AVE SUITE 301
BOSTON MA 02210



RE: SCIW1126
Dennis Dimon

Dear Mr. Kaplan:

Thank you for your call of December 20, 2004 regarding copies of the original documentation for the above contract.

Enclosed please find the following:

- Original application and Supplementary Agreement dated May 4, 1983
- Letter from Barbara Boehm, Vice President Policyowner Services, Charter Security Life dated July 14, 1983
- Letter from Barbara Boehm, Charter Security Life dated September 26, 1983
- Letter from Barbara Boehm, Charter Security Life dated October 14, 1983

Based on the October 14, 1983 letter from Barbara Boehm, the contract was corrected to reflect the 240 monthly payments Period Certain contract. The final payment was issued on May 5, 2003.

We trust that this documentation will satisfy your inquiries and any misunderstanding of when this contract was scheduled to end.

If you have any additional questions, please feel free to contact me at 918 252-8217.

Sincerely,

Judy Kelley
Annuity Payout Specialists II
Affiliated Annuity Operations
December 21, 2004

000022

Clerk ID Prefix : R81 Attn :
 Clerk Name : Green, Laura From : TULSA TELESERVICES
 Wip Case Number : 000000000 Subject : CALL TO 1-800-MET-5000
 Creation Date : 06/05/2003 01:17:54 PM ANNUITY PAYOUTS

POLICY SUFF REF INSURED NAME DATE OF CALL: 06-05-03
 000SCIW11 26 Y DENNIS DIMON

CALLER NAME....: KATHERINE DIMON
 CALLER STREET...: PO BOX 56
 CALLER CITY....: WEST KINGSTON STATE: RI ZIPCODE: 02892 0056
 CALLER PHONE....: 401-782-4613 ALTERNATE PHONE: ALT EXT:
 RELATIONSHIP....: SPOUSE DO/BR: L03 CALLER SEX: F

NOTES: ANNUITY PAYOUTS: PLEASE SEND A DUPLICATE CONTRACT TO THE
 OWNER
 AT THE ABOVE ADDRESS.



Rush ? ☐ Yes ☒ No

Sent To: IND_ANNUITY PAYOUTS TULSA,

Archive Date : 06/12/2003

Comments :

000039

June 9, 2003



DENNIS DIMON
PO BOX 56
WEST KINGSTON RI 02892 0056

RE: SCIW1126

Dear Mr. Dimon,

This letter is in response to a phone call we received from Katherine Dimon. Since your annuity contract has expired, we are unable to provide you with a duplicate contract. However, the terms of your annuity are described below.

The annuity contract was issued on May 5, 1983 under the "Certain 20 Year" option. American Motorist Insurance Company was considered to be the owner of the annuity, however, you were the annuitant and payee. This contract provided you with a monthly income due on June 5th of each year payable for a total of 20 years (240 monthly payments). The payment amount increased by 3% each year.

The first payment was on June 5, 1983. The final payment was on May 5, 2003.

If you have any questions, please call our customer service center at 1-800-635-7775.

Sincerely,

Sandy Franklin

Sandy Franklin
Annuity Payout Specialist III
Annuity Administration Operations

000034

2003 JUN 23 AM 6:04

RECEIVED - JESSA

I Dennis J Dimon would like
To have a copy of ~~my~~ Annuity
Contract. I was Told on the
Phone that if I wrote this
Letter to you that you will
SENT me A Duplicate Contract
SENT ASAP "THANK YOU!"

Dennis J Dimon
Dennis Dimon

RE SCIW1126

06/19/03



000035

July 9, 2003



DENNIS DIMON
PO BOX 56
WEST KINGSTON RI 02892 0056

Dear Mr. Dimon,

We are unable to provide you with a contract. Annuities such as this one were issued due to a settlement from some other company, in your case, it was American Motorist Insurance Company. The company issued the settlement terms and the annuity was set up in accordance to the payment schedule.

This annuity, in accordance with the terms set by American Motorist Insurance Company, provided you with monthly payments for a total of 20 years. The payments increased by 3% each year in June. The first payment was on June 5, 1983. The final payment was on May 5, 2003.

Unfortunately, I do not have any additional information to provide you with.

If you have any questions, please call the customer service center at 1-800-635-7775.

Sincerely,

Sandy Franklin

Sandy Franklin
Annuity Payout Specialist III
Annuity Administration Operations

000030

THE KAPLAN / BOND GROUP

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70

David B. Kaplan
Thomas M. Bond
Andrew S. Kaplan
Tracey N. Kaplan

Attorneys at Law and Proctors in Admiralty
Boston Fish Pier, West Building, Suite 304
Boston, Massachusetts 02210
(617) 261-0080 FAX (617) 261-1538

Counsel
Williamson & Melendez

September 13, 2004

Metropolitan Life Insurance Company
P.O. Box 22053
Tulsa, OK 74121-2053

Dear Sir/Madam:

Please be advised that I have been retained by Mr. Dennis Dimon, Holly Ridge Road, South Kingston, R.I., who entered into a Structured Settlement Contract with your company (see EXHIBIT #2) in 1983.

From my review of the document (a copy of which I have enclosed), it seems that the contract is for "life" and that there was a 20 year guarantee. Mr. Dimon has stated that he has not received his payments since 2/5/03 and that he has been unable to speak to anyone employed by you to determine present status.

Accordingly, I would appreciate your immediate response including a copy of all documents filed in this matter.

Thank you in anticipation of your cooperation.

Very truly yours,

David B. Kaplan

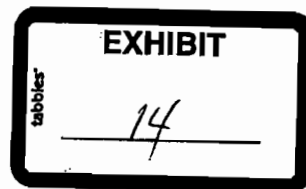
DAVID B. KAPLAN

DBK/cms

Enclosure

cc: : Dennis Dimon

Frederick W. Benson



000037

THE KAPLAN / BOND GROUP

David B. Kaplan
Thomas M. Bond
Tracey N. Kaplan

Attorneys at Law and Proctors in Admiralty
38 Black Falcon Avenue, Suite 301
Boston, Massachusetts 02210

(617) 261-0080
Fax (617) 261-1558

September 28, 2004

Metropolitan Life Insurance Company
P.O. Box 22053
Tulsa, OK 74121-2053

Dear Sir/Madam:

RE: Mr. Dennis Dimon

Dear Sir/Madam:

On September 13, 2004 I communicated with you regarding the above-referenced matter (copy enclosed), and you have not responded.

I shall diary this matter for November 10, 2004 at which time if I have not received any response as requested I shall file suit to enforce the obligation herein.

Very truly yours,

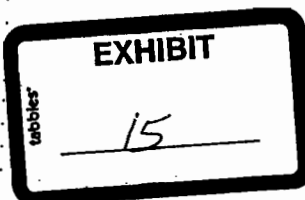
David B. Kaplan /rci

DAVID B. KAPLAN

DBK/rci

Enclosure

cc: Dennis Dimon
Frederick W. Benson



000046

Nov 3, 2004
~~June 7, 2005~~

DENNIS DIMON
PO BOX 56
WEST KINGSTON RI 02892-0056

RE: 000SCIW1126

Dear Mr. Dimon

Thank you for the recent letter to our office.

I have reviewed the original paperwork for this case and found that the option you elected at the time of issue was Income for a Guaranteed Period of 20 Years. This means that you received payments for a period of 20 years and then the contract ended. Your final payment was on May 5, 2003, so you will no longer receive payments from this contract.

If you have any questions, please feel free to contact our customer service number at 1-800-635-7775.

Sincerely,

Clyda Isaacson

Clyda Isaacson
Payout Annuity Specialist
Annuity Administration Operations



000042

THE KAPLAN / BOND GROUP

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70

David B. Kaplan
Thomas M. Bond
Tracey N. Kaplan

Attorneys at Law and Proctors in Admiralty
88 Black Falcon Avenue, Suite 301
Boston, Massachusetts 02210

COMMERCIAL BUSINESS
DENVER - 11

2004 NOV 18 03:58
4077 17-0080
Fax (617) 41-1558

November 12, 2004

SENT CERTIFIED MAIL --
RETURN RECEIPT REQUESTED

Metropolitan Life Insurance Company
P.O. Box 22053
Tulsa, OK 74121-2053

Dear Sir/Madam:

RE: Mr. Dennis Dimon

Dear Sir/Madam:

It appears that your failure to respond to my communications dated 09/28/04 and 09/13/04 indicates that you may be in violation of M.G.L. 176 D and M.G.L. 93 A.

This is my last communication to you prior to filing suit to enforce your obligation herein.

Very truly yours,

David B. Kaplan

DAVID B. KAPLAN

DBK/cms

Enclosures

cc: Dennis Dimon
Frederick W. Benson



000043

November 20, 2004

DAVID B KAPLAN
88 BLACK FALCON AVE STE 301
BOSTON MA 02210

RE: CONTRACT #000SCIW1126
DENNIS DIMON

Dear Mr. Kaplan,

We have responded to Mr. Dimon on this matter on November 3, 2004. We cannot release any information to you. You would need written authorization from Mr. Dimon in order to obtain information on his contract.

If you have any questions regarding this matter, you may call 1-800-635-7775.

Sincerely,

Renee' Ballard
Annuity Payout Specialist
Affiliated Annuity Operations



000040

THE KAPLAN / BOND GROUP

David B. Kaplan
Thomas M. Bond
Tracy N. Kaplan

Attorneys at Law and Proctors in Admiralty
88 Black Falcon Avenue, Suite 301
Boston, Massachusetts 02210

(617) 261-0080
Fax (617) 261-1558

November 24, 2004

Clyda Isaacson
Metropolitan Life Insurance Company
P.O. Box 22053
Tulsa, OK 74121-2053

Dear Ms. Isaacson:

RE: Mr. Dennis Dimon

Dear Sir/Madam:

As per my telephone conversation with you in the above-referenced matter and at your request, enclose herewith an authorization executed by Mr. Dimon requesting that you provide me with copy of all documents in connection with this matter. Perhaps after I review the documents, I will be in a position to understand what transpired.

Thank you for your anticipated cooperation in this matter.

Very truly yours,

David B. Kaplan
DAVID B. KAPLAN

DDK/cms

Enclosure



RECEIVED
LEGAL BUSINESS
NOV 26 2004
11:48

000047

~~SEAL~~
November 16, 2004

To Whom It May Concern: -

I, Dennis J. Dimon, hereby authorize David B. Kay, Esq.,
to act for me in all matters relating to my structured settlement.

~~Witness~~
151 Holly Ridge RD
W. Kingston RI 02892
ADDRESS

~~Witness~~
151 Holly Ridge RD
W. Kingston RI 02892
ADDRESS

86 Laurel Lane
W. Kingston RI 02892
ADDRESS

NAME Dennis J. Dimon
ADDRESS

151 Holly Ridge RD
W. Kingston RI
02892

000046

THE KAPLAN BOND GROUP
ATTN DAVID B KAPLAN
88 BLACK FALCON AVE STE 301
BOSTON MA 02210

RE: SCIW1126
Dennis Dimon

Dear Mr. Kaplan:

The above contract was issued May 5, 1983 under a 20 year Certain Option. This contract provided Mr. Dimon with a monthly income of \$2,543.37 due on the 5th the month. The final payment was issued on May 5, 2003.

The contract is no longer inforce and there is no cash value.

If you have any questions, please feel free to contact our customer service number at 1-800-635-7775.

Sincerely,

Judy Kelley
Annuity Payout Specialists II
Affiliated Annuity Operations
December 14, 2004



000049

DAVID B KAPLAN
THE KAPLAN BOND GROUP
ATTORNEYS AT LAW
88 BLACK FALCON AVE SUITE 301
BOSTON MA 02210

RE: SCIW1126
Dennis Dimon

Dear Mr. Kaplan:

Thank you for your call of December 20, 2004 regarding copies of the original documentation for the above contract.

Enclosed please find the following:

- Original application and Supplementary Agreement dated May 4, 1983
- Letter from Barbara Boehm, Vice President Policyowner Services, Charter Security Life dated July 14, 1983
- Letter from Barbara Boehm, Charter Security Life dated September 26, 1983
- Letter from Barbara Boehm, Charter Security Life dated October 14, 1983

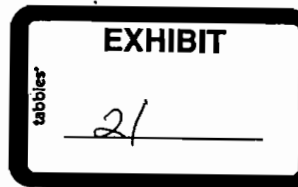
Based on the October 14, 1983 letter from Barbara Boehm, the contract was corrected to reflect the 240 monthly payments Period Certain contract. The final payment was issued on May 5, 2003.

We trust that this documentation will satisfy your inquiries and any misunderstanding of when this contract was scheduled to end.

If you have any additional questions, please feel free to contact me at 918 252-8217.

Sincerely,

Judy Kelley
Annuity Payout Specialists II
Affiliated Annuity Operations
December 21, 2004



000050

1

VOLUME: I
PAGES: 1 through 172
EXHIBITS: See Index

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05-11073 WGY

DENNIS DIMON,)
Plaintiff,)
VS.)
METROPOLITAN LIFE INSURANCE)
COMPANY, KEMPER INSURANCE)
COMPANY, MORGAN STANLEY DW)
INC., MICHAEL B. LATTI,)
LATTI ASSOCIATES, and)
LATTI & ANDERSON LLP,)
Defendants.)

DEPOSITION OF DENNIS J. DIMON, a witness
called on behalf of the Defendant, taken pursuant
to the Provisions of the Federal Rules of Civil
Procedure, before Julie A. Healey, a Certified
Shorthand Reporter, Registered Professional
Reporter, and Notary Public in and for the
Commonwealth of Massachusetts, at the offices of
Ciapciak & Associates, P.C., 99 Access Road,
Norwood, Massachusetts, on June 29, 2006,
commencing at 11:25 a.m.

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<p>1 APPEARANCES:</p> <p>2 THE KAPLAN/BOND GROUP BY: Brian Keane, Esq. 88 Black Falcon Avenue, Suite 301 Boston, Massachusetts 02210 Counsel for the Plaintiff</p> <p>3</p> <p>4 CIAPCIAK & ASSOCIATES, P.C. BY: Peter M. LeBlanc, Esq. 99 Access Road Norwood, Massachusetts 02062 Counsel for the Defendant, Metropolitan Life Insurance Company</p> <p>5</p> <p>6 SULLIVAN WEINSTEIN & McQUAY, P.C. BY: Sandra Sue McQuay, Esq. Two Park Plaza Boston, Massachusetts 02116-3902 Counsel for the Defendant, Morgan Stanley DW, Inc.</p> <p>7</p> <p>8 TODD & WELD, LLP BY: John E. DeWick, Esq. 28 State Street Boston, Massachusetts 02109 Counsel for the Defendants, Michael B. Latti, Latti Associates, and Latti & Anderson LLP</p> <p>9</p> <p>10 DRINKER, BIDDLE & REATH, LLP (VIA TELEPHONE) BY: Timothy J. O'Driscoll, Esq. One Logan Square 18th and Cherry Streets Philadelphia, Pennsylvania 19103-6969 Counsel for the Defendant, Kemper Insurance Company</p> <p>11</p> <p>12 INDEX</p>	<p>1 PROCEEDINGS</p> <p>2 DENNIS J. DIMON, having been</p> <p>3 satisfactorily identified and duly sworn by the</p> <p>4 Notary Public, was examined and testified as</p> <p>5 follows:</p> <p>6 DIRECT EXAMINATION</p> <p>7 BY MR. LeBLANC:</p> <p>8 Q. For the record, my name is Peter LeBlanc,</p> <p>9 I'm representing Metropolitan Life Insurance</p> <p>10 Company, and Mr. Dimon, have you been introduced</p> <p>11 to everyone else in the room?</p> <p>12 A. Yes.</p> <p>13 Q. And do you understand that Mr. Timothy</p> <p>14 O'Driscoll is on the phone and he represents</p> <p>15 Kemper Life Insurance?</p> <p>16 A. Yeah.</p> <p>17 Q. Okay, let's begin here. Mr. Dimon, can</p> <p>18 you state your full --</p> <p>19 MR. LeBLANC: Actually, Counsel, if</p> <p>20 everyone would like to enter into any</p> <p>21 stipulations, waive notary, sign within thirty</p> <p>22 days?</p> <p>23 MR. KEANE: Can he have forty-five</p> <p>24 days, would that be okay?</p>
<p>1 Witness Direct Cross Redirect Recross</p> <p>2 DENNIS J. DIMON</p> <p>3</p> <p>4 (By Mr. LeBlanc) 5 164</p> <p>5 (By Mr. DeWick) 148</p> <p>6 (By Ms. McQuay) 160</p> <p>7 (By Mr. O'Driscoll) 163</p> <p>8</p> <p>9</p> <p>10 EXHIBITS</p> <p>11 Exhibit No. Page</p> <p>12 1 Complaint 124</p> <p>13 2 Annuity Application 110</p> <p>14 3 Supplementary Agreement 126</p> <p>15 No. SC1126</p> <p>16 5 Letter dated 8/12/83 112</p> <p>17 6 Letter dated 9/26/83 115</p> <p>18 7 Letter dated 10/10/83 118</p> <p>19 9 Letter dated 10/12/83 118</p> <p>20 11 Letter dated 9/24/99 96</p> <p>21 12 Telephone Log 101</p> <p>22 13 Letter dated 6/9/03 128</p> <p>23</p> <p>24</p>	<p>1 MR. LeBLANC: Forty-five days, sure.</p> <p>2 MR. KEANE: Waive notary.</p> <p>3 MR. LeBLANC: And reserve objections</p> <p>4 except as to form and motions to strike until</p> <p>5 trial.</p> <p>6 MR. KEANE: Fine.</p> <p>7 MR. LeBLANC: Everyone agrees?</p> <p>8 MR. DeWICK: Yes.</p> <p>9 MR. LeBLANC: Mr. O'Driscoll, did you</p> <p>10 hear the stipulations?</p> <p>11 MR. O'DRISCOLL: Yes.</p> <p>12 MR. LeBLANC: Do you agree?</p> <p>13 MR. O'DRISCOLL: Yes.</p> <p>14 MR. LeBLANC: Thank you.</p> <p>15 BY MR. LeBLANC:</p> <p>16 Q. Mr. Dimon, can you tell us what your full</p> <p>17 name is?</p> <p>18 A. Dennis Jay Diamond.</p> <p>19 Q. And can you spell your middle name?</p> <p>20 A. J-A-Y.</p> <p>21 Q. Now, have you ever gone by any other</p> <p>22 name?</p> <p>23 A. No.</p> <p>24 Q. Okay, and what is your home address?</p>
<p>1 EXHIBITS</p> <p>2 Exhibit No. Page</p> <p>3</p> <p>4 14 Handwritten Note 17</p> <p>5 dated 6/19/03</p> <p>6 15 Fax dated 6/12/03 66</p> <p>7 17 Letter dated 9/13/04 103</p> <p>8 18 Letter dated 9/28/04 104</p> <p>9 20 Note dated 11/16/04 120</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 A. 151 Holly Ridge Road, West Kingston.</p> <p>2 Q. Is that the address you also get your</p> <p>3 mail at?</p> <p>4 A. No, it's P.O. Box 56, West Kingston.</p> <p>5 MR. O'DRISCOLL: Forgive me, Tim</p> <p>6 O'Driscoll, would it be possible for the witness</p> <p>7 to move closer to the telephone? I can barely</p> <p>8 hear him.</p> <p>9 MR. LeBLANC: We can try to move the</p> <p>10 telephone closer to him and see if that works.</p> <p>11 MR. O'DRISCOLL: Thank you.</p> <p>12 BY MR. LeBLANC:</p> <p>13 Q. Mr. Dimon, can you repeat your last</p> <p>14 answer, please?</p> <p>15 A. My Post Office Box is 56, West Kingston.</p> <p>16 Q. Okay, and that's Rhode Island?</p> <p>17 A. Yes, Kingston.</p> <p>18 Q. How long have you been receiving mail at</p> <p>19 the P.O. Box?</p> <p>20 A. Um, about four years now.</p> <p>21 Q. Okay. Before you opened the P.O. Box,</p> <p>22 where did you receive your mail?</p> <p>23 A. Right, at my other house that I had on</p> <p>24 Greenwood Drive in Peacedale.</p>

<p style="text-align: right;">8</p> <p>1 Q. And that's in Rhode Island as well?</p> <p>2 A. Yeah.</p> <p>3 Q. And what was the number Greenwood Drive?</p> <p>4 A. 101 at that time.</p> <p>5 Q. And how long did you live at Greenwood</p> <p>6 Drive?</p> <p>7 A. Almost nineteen years.</p> <p>8 Q. Okay, and how long have you been living</p> <p>9 at the, is it Holly?</p> <p>10 A. Holly Ridge.</p> <p>11 Q. At the Holly Ridge address?</p> <p>12 A. Four years roughly.</p> <p>13 Q. Okay. So, at the time of the trial in</p> <p>14 the Jenny C. matter in 1983, what was your mailing</p> <p>15 address then?</p> <p>16 A. Um, that was also a post office box, that</p> <p>17 was in -- oh, I'm trying to remember, I think that</p> <p>18 was at Charlestown, I can't remember exactly what</p> <p>19 it was.</p> <p>20 Q. Okay. Did you ever live at Laura Lane in</p> <p>21 West Kingston?</p> <p>22 A. Laura Lane? No, well, yes, I'm sorry,</p> <p>23 yeah. I lived there for a little while while the</p> <p>24 case was going on.</p>	<p style="text-align: right;">11</p> <p>1 owns Michaela Louise, it's a fishing boat.</p> <p>2 Q. Now, when you say he owns the Michaela</p> <p>3 Louise?</p> <p>4 A. He owns a piece from what I understand.</p> <p>5 I just started fishing on the boat, not even a</p> <p>6 year ago now.</p> <p>7 Q. Okay.</p> <p>8 A. And I don't know his whole background or</p> <p>9 anything, so.</p> <p>10 Q. Do you own any part of the Michaela</p> <p>11 Louise?</p> <p>12 A. No, I don't own any boats.</p> <p>13 Q. Okay. Have you ever owned a boat?</p> <p>14 A. No. Oh, I'm sorry, yes, I owned a small</p> <p>15 lobster boat, 38-footer, that was, that was quite</p> <p>16 a few years ago now.</p> <p>17 Q. Okay. Did you commercial fish off that</p> <p>18 boat?</p> <p>19 A. Yeah, for, yeah, for the time I had it,</p> <p>20 yeah.</p> <p>21 Q. Okay, and did you have some kind of</p> <p>22 license or permit to allow you to commercial fish</p> <p>23 off that boat?</p> <p>24 A. Yeah, it was just a commercial fishing</p>
<p style="text-align: right;">9</p> <p>1 Q. Okay. Did you ever have any trouble</p> <p>2 getting your mail at any of your mailing addresses</p> <p>3 since 1983?</p> <p>4 A. Sometimes off and on, you know, it would</p> <p>5 be misplaced or something, you know, wouldn't</p> <p>6 receive some things. Like, one time I had to</p> <p>7 track down my license because one of the renewals</p> <p>8 was lost in the mail.</p> <p>9 Q. Regarding the annuity payments that you</p> <p>10 received in this case, did you ever have trouble</p> <p>11 getting a check from MetLife in terms of mailing</p> <p>12 you a check?</p> <p>13 A. No, no.</p> <p>14 Q. Okay. Was there a check that was mailed</p> <p>15 to the wrong address in 1991?</p> <p>16 A. Um, there was one, yes, and that was, I</p> <p>17 was going through a separation then at that time,</p> <p>18 but we wound up getting back together, and I</p> <p>19 changed the mailing address to a post office box</p> <p>20 and the other people that had the post office box</p> <p>21 which canceled the post office box when I was out</p> <p>22 fishing, and I didn't realize it, and then the</p> <p>23 check had turned around and got sent back because</p> <p>24 I never received it or anything.</p>	<p style="text-align: right;">12</p> <p>1 license, that's all it was.</p> <p>2 Q. Okay, and what did you fish for?</p> <p>3 A. I was lobstering at that time, never made</p> <p>4 anything.</p> <p>5 Q. Okay, and what time frame was that?</p> <p>6 A. Um, it was the same time I lived at</p> <p>7 Greenwood, so, I can't remember the years right</p> <p>8 now.</p> <p>9 Q. And for how long did you do this?</p> <p>10 A. That was only for, like, two years.</p> <p>11 Q. Okay. Did you sell that boat?</p> <p>12 A. No, it wound up getting actually</p> <p>13 destroyed actually, it just nobody bought the boat</p> <p>14 or anything else like that. I had it on the</p> <p>15 market, and the boat just went to waste.</p> <p>16 Q. So, dry rot or was it on land?</p> <p>17 A. Yeah.</p> <p>18 Q. Dry docked?</p> <p>19 A. Yeah, I hauled it out and it sat there.</p> <p>20 Q. Okay. Did you sell your permit or your</p> <p>21 license to fish?</p> <p>22 A. No, I just, you don't have to renew it</p> <p>23 every year if you don't want to, you know, so, I</p> <p>24 just let that go.</p>
<p style="text-align: right;">10</p> <p>1 Q. And was that check replaced --</p> <p>2 A. Yeah.</p> <p>3 Q. -- by MetLife?</p> <p>4 A. Yeah, I called them up and had the check</p> <p>5 replaced within, I forgot how many days it was,</p> <p>6 but.</p> <p>7 Q. Okay. Did you ever, between 1983 and</p> <p>8 2003, not receive a monthly check from MetLife?</p> <p>9 A. No.</p> <p>10 Q. A payment on the annuity?</p> <p>11 A. Right.</p> <p>12 Q. So, you received every one of those</p> <p>13 monthly checks?</p> <p>14 A. Right.</p> <p>15 Q. Okay. Can you tell me who your present</p> <p>16 employer is?</p> <p>17 A. Um, it's Mike, Mike Hall.</p> <p>18 Q. Hall?</p> <p>19 A. Hall.</p> <p>20 Q. H-A-L-L?</p> <p>21 A. I think that's how you pronounce it,</p> <p>22 yeah.</p> <p>23 Q. Okay. Does Mr. Hall have a title?</p> <p>24 A. Um, he, he's the captain right now, he</p>	<p style="text-align: right;">13</p> <p>1 Q. Okay. Can you tell me what your Social</p> <p>2 Security number is?</p> <p>3 A. Not right off, not right off the top of</p> <p>4 my hand. I got it in my wallet though.</p> <p>5 Q. Okay. Would you mind pulling out the</p> <p>6 card and reading that to me?</p> <p>7 A. Sure, 036-44-8733.</p> <p>8 Q. Okay. Have you ever had a different</p> <p>9 Social Security number?</p> <p>10 A. Um, we had a big hassle about that with</p> <p>11 credit companies, and at one point there when they</p> <p>12 supposedly had another security number on me, and</p> <p>13 which I never even knew about, and it destroyed my</p> <p>14 credit references and stuff like that for, for</p> <p>15 quite a while, and it took me about a year to</p> <p>16 straighten that all out.</p> <p>17 Q. Okay.</p> <p>18 A. It didn't even belong to me.</p> <p>19 Q. And how long ago was that?</p> <p>20 A. That was in the same time frame I was in</p> <p>21 Greenwood Drive, so.</p> <p>22 Q. Okay, and you lived at Greenwood Drive</p> <p>23 for about nineteen years?</p> <p>24 A. Roughly, yeah.</p>

<p style="text-align: right;">14</p> <p>1 Q. Okay, and Mr. Dimon, I just want to 2 explain to you at this point, I asked you to read 3 your Social Security card and you read that for 4 me. There have been some evidence presented that 5 you may have some difficulty with reading. 6 A. Yes, I have dyslexia. 7 Q. Okay. If I ever ask you to read a 8 document and you can't read it, you don't 9 understand the document, you just let me know, 10 okay? 11 A. Hmm mmm. 12 Q. It's most important that we get the 13 accurate information today, is that fair enough? 14 A. I've got, like, a second grade reading 15 level, that's what it is. 16 Q. Okay. So, we can agree if you don't 17 understand something in a document I show you, 18 you'll just tell me that? 19 A. Right. 20 Q. Okay, fair enough, and are you married 21 now? 22 A. Yes. 23 Q. And you're married to? 24 A. Katherine Dimon.</p>	<p style="text-align: right;">17</p> <p>1 A. Yeah, basically, yeah. 2 Q. Okay. Does she provide you financial 3 assistance in terms of balancing your checkbook 4 and paying your bills, that kind of thing? 5 A. She handles all of it. 6 Q. Okay. Is that, when you say she handles 7 all of it, is that part of the division of 8 responsibilities in the marriage? 9 A. Yeah, pretty much because, you know, the 10 simple fact is I have trouble writing too. 11 Q. Okay, and what kind of trouble do you 12 have writing? 13 A. Spelling words, stuff like that. 14 Q. Okay. There are some exhibits we'll get 15 to later in handwriting. Do you write letters to 16 people if you have to, or? 17 A. No. 18 Q. Never? 19 A. No. 20 MR. LeBLANC: Can you mark that as 21 Exhibit 14, please. 22 (Exhibit No. 14, Handwritten Note 23 dated 6/19/03, marked for identification.) 24</p>
<p style="text-align: right;">15</p> <p>1 Q. And what's Katherine's middle name? 2 A. Irene I think. 3 Q. And I'm about to ask you what may be the 4 toughest question the whole deposition, what date 5 were you married? 6 A. October 1st. 7 Q. That's good, a lot of guys don't know. 8 A. Hunting season. 9 Q. And what year was that? 10 A. The year, that's another story, I can't 11 remember the year. 12 Q. Okay. 13 A. Sorry. 14 Q. You were married when you were injured on 15 the Jenny C. though, right? 16 A. Right. 17 Q. So, it was before 1982? 18 A. Yeah. 19 Q. Was it a long time before 1982 or just a 20 couple years? 21 A. No, it wasn't too much after that I got 22 hurt that we was married. 23 Q. And can you tell me what -- do you mind 24 if I refer to your wife as Kathy during the</p>	<p style="text-align: right;">18</p> <p>1 BY MR. LeBLANC: 2 Q. Mr. Dimon, I'm going to hand you a 3 document that's been marked as Exhibit 14 for 4 identification. It's dated June 19th, 2003, it's 5 not addressed to an individual, but it appears to 6 be signed by Dennis J. Dimon. 7 Can you take a look at that document, 8 please? 9 A. It doesn't mean anything to me because I 10 don't, I don't even know when it was written, 11 let's put it that way. 12 Q. Okay. Have you ever seen that document 13 before? 14 A. I don't remember it to tell you the 15 truth. 16 Q. Okay. Is that your handwriting? 17 A. My signature is on the bottom, yes. 18 Q. Okay, but the rest, the note part of the 19 handwriting, do you know whose handwriting that 20 is? 21 A. Um, if it would have been anybody, it 22 would have been my wife's I guess. 23 Q. Okay, and if your wife were to write a 24 letter on your behalf, would you discuss the</p>
<p style="text-align: right;">16</p> <p>1 deposition? 2 A. Go ahead, sure. 3 Q. Can you tell me what Kathy's level of 4 education is? 5 A. Um, I think she might have went to the 6 ninth or tenth grade I think. 7 Q. Okay, and in the course of reviewing the 8 documents in this case, it appears that she had 9 provided you some assistance with reading and 10 understanding some documents, is that true? 11 A. Yeah, just about all of it. 12 Q. Okay. How much do you rely on her to 13 communicate to you about the mail you receive and 14 the documents you receive? 15 A. Just about everything. 16 Q. Okay, and when you receive a document, 17 say your attorney Mr. Kaplan sends you a letter, 18 when you open that, what do you do with it? 19 A. I usually give it to her. 20 Q. Okay, and then what happens? 21 A. Then she'll read it to me. 22 Q. Okay, and do you generally get, in your 23 opinion, a good understanding of what the letter 24 says from what she is reading to you?</p>	<p style="text-align: right;">19</p> <p>1 letter with her, would you tell her what to write? 2 A. Basically, yeah. 3 Q. Okay. So, was that your practice, if you 4 had to communicate in writing with MetLife or any 5 other individual or company, that Kathy would 6 write the note and you would tell her what to 7 write? 8 A. Hmm mmm. 9 Q. Okay. Do you recall what was happening 10 in June of 2003 that would cause you to ask Kathy 11 to write a letter like this? 12 A. If I'm not mistaken, I think MetLife 13 wanted me to send them a letter with my signature 14 and stuff like that stating that, that we wanted 15 copies of the, the records and stuff like that 16 which was given to you by our lawyer and stuff 17 like that concerning, you know, the policy and 18 everything else like that. 19 Q. Okay. 20 A. I'm pretty sure. 21 Q. All right. When you say given to you by 22 our lawyer, are you referring, when you say our 23 lawyer, to Mr. Kaplan? 24 A. No, Mr. Latti, at that time it would have</p>

<p style="text-align: center;">20</p> <p>1 been our lawyer that handled all of our, you know, 2 proceeds with the case at that time, you know. It 3 went down through so many different people that, 4 you know, that I thought, you know, Latti's office 5 was handling that all the way down through, you 6 know. 7 I'm not sure on how exactly it works, 8 but. 9 Q. Okay, and when you just said that time, 10 do you mean the 1983 time frame? 11 A. Yeah, right. 12 Q. During the marriage, was Kathy ever 13 employed? 14 A. Yes. 15 Q. And what did she do for employment or 16 job? 17 A. Well, she, right now she's a CNA. She 18 had some other jobs as housekeepers and stuff like 19 that through a place called South Bay Manor. 20 Q. Okay. When you say CNA, do those 21 initials stand for certified nurse's assistant? 22 A. Yeah. 23 Q. And when she was a housekeeper, was that 24 in a hotel or a motel, or?</p>	<p style="text-align: center;">23</p> <p>1 Q. Now, can you explain to me why you don't 2 have taxes and deductions taken from your wages? 3 A. Because commercial fisherman is declared 4 self-employed, and so, they don't take any wages, 5 I mean not wages, taxes or even, you know, for 6 unemployment or anything like that, nothing out of 7 us, so, we wind up paying it at the end of the 8 year on, based on what we made for the year, and 9 then we have state tax, federal tax and 10 self-employment tax, it's all taken out. 11 Q. Okay. Is that something that you plan 12 for every year? 13 A. Yeah, try to. 14 Q. Hopefully? 15 A. Yeah, try to. 16 Q. And in terms of your income from fishing, 17 the money you make, do you get a share of the 18 proceeds from the boat, or do you get paid by the 19 hour? 20 A. No, a share. 21 Q. So, when you're on a boat with Captain 22 Hall, do you get a full share or a partial share? 23 A. Full share. 24 Q. So, how many shares are there on a boat?</p>
<p style="text-align: center;">21</p> <p>1 A. It was, like, an old folk's home type of 2 thing, assisted living, a place like that. 3 Q. Okay, and do you know what she earns, 4 what her wage is? 5 A. No, not right offhand, no. She would 6 know though. 7 Q. Okay. Before you married Kathy, did you 8 have any other prior marriages? 9 A. No. 10 Q. When you file your taxes -- well, I guess 11 I should ask, do you file tax returns? 12 A. Yeah. 13 Q. Okay. When you file your tax returns, 14 does someone help you with that? 15 A. Yeah, H&R Block. 16 Q. And do they just complete your returns, 17 are they your accountant? 18 A. No, they're not our accountant, no, just 19 returns. 20 Q. Okay. Do you have an accountant? 21 A. No. 22 Q. Have you ever used the services other 23 than H&R Block of a financial consultant? 24 A. No.</p>	<p style="text-align: center;">24</p> <p>1 A. Depending on how many people we take at 2 the time, there could be anywhere from three to 3 five. 4 Q. Okay, and everyone gets one share? 5 A. Right. 6 Q. Even the captain? 7 A. Yeah. 8 Q. And when was the last time you went out 9 fishing? 10 A. I've been almost four weeks ago now. 11 Q. And how long were you out for that 12 fishing opener? 13 A. Four days. 14 Q. Is opener the term they use here, or is 15 there some other term? 16 A. Just a trip, that's all. 17 Q. Okay, and so, you were fishing, actually 18 fishing for four days? 19 A. Right. 20 Q. Okay, and how much, what was your take, 21 what was your share of that trip? 22 A. Um, how much it was, I'm trying to 23 remember what it was now, I want to say \$2,000 24 give or take.</p>
<p style="text-align: center;">22</p> <p>1 Q. A broker? 2 A. No. 3 Q. Any kind of financial advisor? 4 A. No. 5 Q. And where is the H&R Block office located 6 that you go to? 7 A. It's in Narragansett. 8 Q. And that's in Rhode Island? 9 A. Yes. 10 Q. And how long have you been going to H&R 11 Block? 12 A. Um, ever since I've been fishing really, 13 ever since I got married we've been going there. 14 Q. So, since before 1982? 15 A. Yeah. 16 Q. And what kind of services did H&R Block 17 provide to you, what did they do for you? 18 A. They just did the taxes, I got to pay my 19 taxes, you know, myself, I don't have anything 20 taken out of my wages or anything else like that, 21 so, you know, they just do what they do I guess. 22 Q. So, you bring them a stack of documents, 23 and? 24 A. Receipts and stuff like that, that's all.</p>	<p style="text-align: center;">25</p> <p>1 Q. Okay. Do you get paid in cash or check? 2 A. Check. 3 Q. And the \$2,000 you received from your 4 last fishing trip, there were no deductions taken 5 out of that, that was your straight share? 6 A. Right, right. 7 Q. And how many trips do you go on in a 8 year? 9 A. Oh, God, there's no way of answering that 10 because of the weather and stuff like that, 11 there's no way of answering that. 12 Q. Okay. What's the fewest number of trips 13 you've made in a year? 14 A. I wouldn't, I wouldn't even remember 15 because they're so frequent, you know, and 16 sometimes you go weeks or a month without even 17 going fishing. 18 Q. Okay. Can you tell us what was your 19 gross income before taxes last year? 20 A. I want to say 20 something, somewhere 21 around 20 some thousand I think. 22 Q. Okay, and is that pretty average for you? 23 A. No. 24 Q. Low or high?</p>

<p style="text-align: right;">26</p> <p>1 A. High.</p> <p>2 Q. 20 something is high?</p> <p>3 A. Yes, yeah.</p> <p>4 Q. Okay.</p> <p>5 A. I've had at least 15 for the year.</p> <p>6 Q. And do you recall what the high was?</p> <p>7 A. Um, 20 is about my highest.</p> <p>8 Q. That's about it, huh, okay. Do you have</p> <p>9 any children?</p> <p>10 A. Two.</p> <p>11 Q. And what are their ages?</p> <p>12 A. Um, twenty-four and twenty-five I think.</p> <p>13 Q. Okay.</p> <p>14 A. I might be off.</p> <p>15 Q. Boy, girl, boy, boy?</p> <p>16 A. Two girls.</p> <p>17 Q. Is Kathy their mother?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Now, how far did your two girls</p> <p>20 get in school, what was their formal education</p> <p>21 like?</p> <p>22 A. They graduated high school.</p> <p>23 Q. Did they go to public or private school?</p> <p>24 A. Private, public school, sorry.</p>	<p style="text-align: right;">29</p> <p>1 things, you know, and some other things, you know,</p> <p>2 what to do and what not to do, stuff like that.</p> <p>3 Q. And the things you're talking about are</p> <p>4 the settlement and some of the decisions you made</p> <p>5 during the trial or during that litigation?</p> <p>6 A. Yeah, a few things, right.</p> <p>7 Q. Okay, and where does she live now?</p> <p>8 A. She lives on Curtis Corner Road in</p> <p>9 Peacedale.</p> <p>10 Q. What was that road?</p> <p>11 A. Curtis Corner.</p> <p>12 Q. Curnis?</p> <p>13 A. Curtis.</p> <p>14 Q. Okay. Do you have any brothers or</p> <p>15 sisters?</p> <p>16 A. Two brothers.</p> <p>17 Q. And what do they do for a living?</p> <p>18 A. Both commercial fishermen.</p> <p>19 Q. Okay, and I guess is it Frederick Benson?</p> <p>20 A. Right.</p> <p>21 Q. Mr. Benson was telling me that he had</p> <p>22 employed your brothers at a time.</p> <p>23 A. Right.</p> <p>24 Q. Were you ever employed by Mr. Benson?</p>
<p style="text-align: right;">27</p> <p>1 Q. Okay. Have either of them gone to</p> <p>2 college?</p> <p>3 A. No, they didn't want to go.</p> <p>4 Q. Do they still live with you, or?</p> <p>5 A. Yeah, they're still living with me.</p> <p>6 Q. Okay. Your mom was mentioned in some of</p> <p>7 the earlier documents in this case.</p> <p>8 A. Hmm mmm.</p> <p>9 Q. Is she still living?</p> <p>10 A. Yes, she is.</p> <p>11 Q. And what's her name?</p> <p>12 A. Janice Dimon.</p> <p>13 Q. And is your father still living?</p> <p>14 A. Whose, my father?</p> <p>15 Q. Yes.</p> <p>16 A. No.</p> <p>17 Q. Okay, and how old is your mother?</p> <p>18 A. I'm not sure to tell you the truth. She</p> <p>19 won't tell me.</p> <p>20 Q. Good for her, and is she still working</p> <p>21 now?</p> <p>22 A. No, she's not, she's retired.</p> <p>23 Q. What business did she retire from?</p> <p>24 A. Oh, she was more or less self-employed.</p>	<p style="text-align: right;">30</p> <p>1 A. Yes.</p> <p>2 Q. Did you ever consult with your brothers</p> <p>3 about either the accident on the Jenny C. or the</p> <p>4 legal matter?</p> <p>5 A. Not so much on the legal matter, but you</p> <p>6 know, we talked about everything that happened on</p> <p>7 the boat and everything, you know, because they</p> <p>8 knew the situation too, you know, so.</p> <p>9 Q. Okay. Did they work on the Jenny C. with</p> <p>10 you?</p> <p>11 A. No, it was supposed to be a one-trip</p> <p>12 deal.</p> <p>13 Q. Okay. It wasn't going to be a long-term</p> <p>14 employment for you?</p> <p>15 A. No, it was more or less, like, a transit</p> <p>16 site, what they call a transit site because I was</p> <p>17 fishing on another boat, and he didn't want to go</p> <p>18 out fishing, so, I took that site to make some</p> <p>19 extra money at that time, and it didn't really</p> <p>20 work out that good for me.</p> <p>21 Q. Okay, and where do your brothers live</p> <p>22 right now?</p> <p>23 A. One lives in Wakefield, I'm not sure of</p> <p>24 his address, and one lives in Laura Lane, West</p>
<p style="text-align: right;">28</p> <p>1 She had a ceramic business that she started</p> <p>2 herself.</p> <p>3 Q. Okay. A ceramic business, bowls,</p> <p>4 knickknacks, that kind of thing?</p> <p>5 A. Right.</p> <p>6 Q. And she ran the business by herself?</p> <p>7 A. Well, her and my father.</p> <p>8 Q. Now, back in 1983, was your mother</p> <p>9 involved in the Jenny C. settlement at all?</p> <p>10 A. Um, yeah, she was there more or less to</p> <p>11 help me out with -- well, she got me the lawyer</p> <p>12 actually. She called a few people and tried to</p> <p>13 find the best one for me, you know, and she found</p> <p>14 Mr. Latti for me.</p> <p>15 Q. Okay. Do you know if she was ever</p> <p>16 represented by Mr. Latti herself?</p> <p>17 A. No.</p> <p>18 Q. And other than finding Mr. Latti to</p> <p>19 represent you in that matter, in what other ways</p> <p>20 did she help with that case?</p> <p>21 A. Well, she was there for me, you know,</p> <p>22 when the court cases were going on and stuff like</p> <p>23 that, she went over some of the documents and</p> <p>24 stuff like that, and you know, advised me on some</p>	<p style="text-align: right;">31</p> <p>1 Kingston.</p> <p>2 Q. Is that your current address, Laura Lane?</p> <p>3 A. No.</p> <p>4 Q. But you lived there?</p> <p>5 A. I lived there, right.</p> <p>6 Q. Is that a family home?</p> <p>7 A. My father-in-law had a place that we</p> <p>8 could move into because we couldn't afford to rent</p> <p>9 and stuff like that where we were staying, this is</p> <p>10 after I got hurt, and so, we moved into my</p> <p>11 father-in-law's mother's old place.</p> <p>12 Q. Okay. Is that the same house your</p> <p>13 brother is living in now?</p> <p>14 A. No, no.</p> <p>15 Q. It's a different house on Laura Lane?</p> <p>16 A. Yeah, totally.</p> <p>17 Q. Do you have any family or friends who</p> <p>18 have been employed by an insurance company before?</p> <p>19 A. No.</p> <p>20 Q. Anyone employed by a brokerage or</p> <p>21 financial institution?</p> <p>22 A. No.</p> <p>23 Q. Okay. So, no one in your family is a</p> <p>24 former employee of MetLife?</p>

<p>32</p> <p>1 A. No.</p> <p>2 Q. Or any of the other defendants in this</p> <p>3 case?</p> <p>4 A. No.</p> <p>5 Q. Okay, and when I say defendants in this</p> <p>6 case, do you understand I mean the parties that</p> <p>7 you're suing?</p> <p>8 A. Right.</p> <p>9 Q. Okay, and that's MetLife, Kemper</p> <p>10 Insurance Company, Mr. Latti, Latti Associates,</p> <p>11 Latti & Anderson --</p> <p>12 A. Hmm mmm.</p> <p>13 Q. -- and Morgan Stanley. With regards to</p> <p>14 your education or formal education, what grade did</p> <p>15 you complete in school?</p> <p>16 A. It would have been eighth grade.</p> <p>17 Q. And when did you leave school?</p> <p>18 A. When I was in ninth grade, about six</p> <p>19 months after ninth grade.</p> <p>20 Q. Okay.</p> <p>21 A. At that time they didn't know how to deal</p> <p>22 with dyslexia, so, they just almost tossed me</p> <p>23 aside.</p> <p>24 Q. Okay. After you left school in the ninth</p>	<p>35</p> <p>1 the boat, would he be the captain?</p> <p>2 A. He would have been the captain, right.</p> <p>3 Q. Now, there were some documents from the</p> <p>4 original Jenny C. case that indicated that you</p> <p>5 didn't want to sue Mr. Champlin individually.</p> <p>6 A. Right.</p> <p>7 Q. And you also didn't want to seize the</p> <p>8 boat, the Jenny C.?</p> <p>9 A. Right.</p> <p>10 Q. And why was that?</p> <p>11 A. Why take somebody's life for it? You</p> <p>12 know, you rely on fishing as your livelihood and</p> <p>13 money, you know, and he was going through a hard</p> <p>14 time himself with his daughter with cancer and</p> <p>15 stuff like that, and she wound up passing away</p> <p>16 too, she was only young, so, you know, why take</p> <p>17 his form of income away, you know.</p> <p>18 I'm not that way, I wasn't brought up</p> <p>19 that way, you know.</p> <p>20 Q. Okay. So, for the damages you suffered</p> <p>21 on the Jenny C., how did you expect to be</p> <p>22 compensated for those, who was going to pay?</p> <p>23 A. At that time, I, I really didn't know,</p> <p>24 you know. I knew he had insurance, you know, and</p>
<p>33</p> <p>1 grade, did you ever try to go back to school at</p> <p>2 all for anything?</p> <p>3 A. I tried a few times, my mother got me</p> <p>4 into a few classes, like, to try and improve my</p> <p>5 reading and stuff like that, and some of them were</p> <p>6 government funded, and they discontinued them</p> <p>7 because they had lack of funds.</p> <p>8 So, after that, I just got discouraged,</p> <p>9 said to heck with it, and wound up going fishing</p> <p>10 for the rest of that time.</p> <p>11 Q. Okay, and is commercial fishing the type</p> <p>12 of business where you have mostly on-the-job</p> <p>13 training?</p> <p>14 A. Basically, yeah.</p> <p>15 Q. Okay. So, it's the first time you go out</p> <p>16 on a boat, no one's showing you a manual of how to</p> <p>17 gaff a fish, they just show you how to gaff a</p> <p>18 fish, is that fair?</p> <p>19 A. Exactly, right.</p> <p>20 Q. So, you learn as you go?</p> <p>21 A. Right.</p> <p>22 Q. Okay, and as you gain experience as a</p> <p>23 commercial fisherman, does the amount you get paid</p> <p>24 change at all?</p>	<p>36</p> <p>1 I figured, you know, they'd probably take care of</p> <p>2 the hospital bills and stuff like that, you know,</p> <p>3 and that would be it, you know. That's the way I</p> <p>4 felt about it.</p> <p>5 Q. Okay, but eventually, you received a</p> <p>6 verdict that was more than the hospital bills; is</p> <p>7 that right?</p> <p>8 A. Oh, yes, right.</p> <p>9 Q. And who in your mind did you think was</p> <p>10 going to pay that verdict?</p> <p>11 A. The insurance companies I guess.</p> <p>12 Q. Okay. Other than your training as a</p> <p>13 commercial fisherman, since you left school, did</p> <p>14 you take any other kind of training, employment</p> <p>15 training or anything?</p> <p>16 A. No.</p> <p>17 Q. Okay.</p> <p>18 A. I've tried to get out of it a few years</p> <p>19 ago and stuff like that and tried to find land</p> <p>20 jobs and my education, and you know, the fact of</p> <p>21 not being able to read and stuff like that, I, I</p> <p>22 haven't been able to find anything on land to</p> <p>23 really go to and stuff.</p> <p>24 Q. Okay, and when you just said I tried to</p>
<p>34</p> <p>1 A. Yes, yeah.</p> <p>2 Q. So, way back when, when you started, what</p> <p>3 kind of pay did you receive, a partial share, or?</p> <p>4 A. When I first started out, I was only</p> <p>5 getting what they call a share of the shack, and</p> <p>6 shack is cash which you get for, on a dragger,</p> <p>7 like, lobsters, scallops and stuff like that, and</p> <p>8 that's all I was receiving at that time until I</p> <p>9 got on to the crew itself, and then I was just</p> <p>10 getting out, like, a half share, half of whatever</p> <p>11 they made, and that was it until, well, a good</p> <p>12 four years of fishing, and then I finally got into</p> <p>13 a full share.</p> <p>14 Q. Okay. Do you recall who owned the</p> <p>15 Jenny C. in 1983?</p> <p>16 A. Um, that was Gary, Gary Champlin, I'm not</p> <p>17 sure on the spelling either.</p> <p>18 Q. Okay, and what was your relationship with</p> <p>19 Mr. Champlin?</p> <p>20 A. I never really spoke to him until after</p> <p>21 the accident because he had somebody else running</p> <p>22 the boat, and the person that was running the</p> <p>23 boat, he's passed away now.</p> <p>24 Q. Okay. So, that person who was running</p>	<p>37</p> <p>1 get out of it, did you mean get out of commercial</p> <p>2 fishing?</p> <p>3 A. Right.</p> <p>4 Q. Have you ever applied or received any</p> <p>5 federal or state certificates, licenses, or</p> <p>6 permits to work in any particular field?</p> <p>7 A. No.</p> <p>8 Q. But you did receive a commercial fishing</p> <p>9 license at some point?</p> <p>10 A. Right.</p> <p>11 Q. You applied for one?</p> <p>12 A. Right.</p> <p>13 Q. And you received that license, it was</p> <p>14 issued to you?</p> <p>15 A. Right.</p> <p>16 Q. Okay, and who issued that?</p> <p>17 A. You mean?</p> <p>18 Q. Was it the State of Rhode Island, or?</p> <p>19 A. Right, yeah, it would have been the State</p> <p>20 of Rhode Island, right.</p> <p>21 Q. Okay. Did you ever receive a federal</p> <p>22 license from the Fishery Service, the United</p> <p>23 States Fishery Service or anyone else?</p> <p>24 A. No, no.</p>

<p style="text-align: right;">38</p> <p>1 Q. Okay. Is it common for a commercial 2 fisherman to have more than just a state 3 commercial fishing license? 4 A. With a documented vessel, yeah. 5 Q. And what do you mean by a documented 6 vessel? 7 A. Federal funded I guess or something to do 8 with the federal government I guess, fisheries, 9 you know, for selling, you know, selling fish and 10 stuff I guess. 11 Q. Okay. If you were working on a 12 documented vessel, would it be the captain's 13 responsibility or the owner's responsibility to 14 get you that kind of license? 15 A. You mean a federal permit? 16 Q. Right. 17 A. Sometimes the captains will help them 18 out, yeah. 19 Q. Do you currently hold a license to fish? 20 A. No. 21 Q. But you still fish? 22 A. Yeah, right, I work on deck, I don't run 23 a boat or anything else like that, I just work on 24 deck.</p>	<p style="text-align: right;">41</p> <p>1 Q. Okay. So, the state would send you the 2 form, your wife would help you fill it out and 3 send it back? 4 A. Right, right. 5 Q. Okay. Did you ever serve in the armed 6 services? 7 A. No. 8 Q. Other than the injury you received during 9 your trip on the Jenny C., have you ever had any 10 other kind of physical injury? 11 A. Um, just lower back, I slipped a disc a 12 few years back. Other than that, no. 13 Q. Okay. Have you ever applied for a 14 disability rating? 15 A. No. 16 Q. Have you ever seen a mental health 17 professional, a counselor or psychologist? 18 A. No, my wife would like me to, but no. 19 Q. Are you currently taking any kind of 20 medication? 21 A. Just for high blood pressure, that's it. 22 Q. And what is the name of that medication? 23 A. I'm not sure of the name. 24 Q. Okay. Do you have to take it every day,</p>
<p style="text-align: right;">39</p> <p>1 Q. If you were going to run a boat, would 2 you need a different kind of license? 3 A. Yeah. 4 Q. Do you have a driver's license? 5 A. Yeah. 6 Q. And issued by the State of Rhode Island? 7 A. Hmm mmm. 8 Q. Now, other than fishing, have you held 9 any other kind of jobs since you left school? 10 A. No. 11 Q. Was fishing kind of a natural for you 12 because of your family's involvement? 13 A. Yeah, because my father was, he 14 lobstered, you know, out of a skiff for what, 15 almost twenty-six years, and more or less went 16 down through the family, you know, and that's how 17 I got into fishing. 18 Q. Okay. Have you ever owned a business of 19 your own? 20 A. Well, the lobster boat I had, it was kind 21 of business related, yeah. 22 Q. Okay. 23 A. Like I said, it didn't last long. 24 Q. Did you have employees?</p>	<p style="text-align: right;">42</p> <p>1 or? 2 A. Yeah. 3 Q. Does it, in your opinion, will taking 4 that medication have any kind of impact on your 5 testimony here today? 6 A. No. 7 Q. It doesn't cause you to be sleepy or 8 drowsy or anything like that? 9 A. No, no. 10 Q. It doesn't cause you to be confused, or? 11 A. No. 12 Q. Okay. Have you ever been a party to a 13 competency proceeding? 14 A. What's that? 15 Q. It's a proceeding where you, a court case 16 or a court action where you try to prove that 17 someone is not competent any longer, someone is 18 mentally ill, or? 19 A. No, no. 20 Q. Okay. Do you remember a gentleman by the 21 name of Leonard Decof? 22 A. No. 23 Q. Okay. During the Jenny C. trial or 24 Jenny C. litigation, Mr. Decof was appointed as a</p>
<p style="text-align: right;">40</p> <p>1 A. Um, for say, no, not really, no. 2 Q. Were there individuals like yourself who 3 were self-employed commercial fishermen who helped 4 you on the boat? 5 A. Yeah, basically, yeah. 6 Q. Okay. Did you do anything formal with 7 the state to get your fishing boat business going? 8 A. No, no. 9 Q. You never applied for a permit from the 10 state -- 11 A. No. 12 Q. -- to have a corporation or anything like 13 that? 14 A. No. 15 Q. Okay, and I believe you testified earlier 16 that you have to renew your commercial fishing 17 license on a yearly basis? 18 A. Right. 19 Q. Who would help you with that renewal? 20 A. My wife. 21 Q. Is there a form you need to fill out? 22 A. Yeah. 23 Q. And how would you get that form? 24 A. It was received to me through the mail.</p>	<p style="text-align: right;">43</p> <p>1 guardian ad litem for you. 2 A. Hmm mmm. 3 Q. Does that ring a bell at all for you? 4 A. I remember them appointing a guardian, 5 yes, but I didn't know his name. 6 Q. Okay. Did you meet with Mr. Decof? 7 A. Um, I remember going to an office with a 8 few other people and stuff like that and 9 discussing some stuff, but I'm not sure on names 10 and stuff like that. 11 Q. Okay. When you say you're not sure on 12 names, you don't remember who went to the meeting 13 with you? 14 A. Right. 15 Q. Would it have been your wife, Kathy, 16 would she go to that kind of meeting? 17 A. Yeah, she was there, and I think my 18 mother was there for one too. 19 Q. Okay, and how many meetings total did you 20 have with Mr. Decof? 21 A. I think one, I'm not sure. 22 Q. And so, you recall that you and your wife 23 and maybe your mother went to a meeting with the 24 guardian at his office?</p>

<p style="text-align: right;">44</p> <p>1 A. Hmm mmm.</p> <p>2 Q. Was anyone else there at the meeting?</p> <p>3 A. Um, I'm not sure at that time. I know, I</p> <p>4 know when things went down in the courtroom and</p> <p>5 stuff like that, that we had, we left the</p> <p>6 courthouse, and we went to another building, and</p> <p>7 there was quite a few people there, but I'm not</p> <p>8 sure exactly what was, was said all the way</p> <p>9 around.</p> <p>10 You know, it's so long ago, it's hard to</p> <p>11 remember exactly what was going on at that time.</p> <p>12 Q. Okay, and I'm not sure I'm going to</p> <p>13 phrase this correctly, but you just said we were</p> <p>14 in the courtroom and either when it was going down</p> <p>15 or when it went down, what did you mean by that?</p> <p>16 A. Well, at the end of the first trial and</p> <p>17 then we went to another one because when they</p> <p>18 appointed a guardian to me, I wasn't quite sure on</p> <p>19 exactly, the judge asked me how much money that we</p> <p>20 were going to receive and stuff like that, and</p> <p>21 because I wasn't sure of the total amount of what</p> <p>22 we were receiving, and then that's when the judge</p> <p>23 turned around and assigned the guardian to me to</p> <p>24 go over everything and make sure I understood</p>	<p style="text-align: right;">47</p> <p>1 did he ask you some questions?</p> <p>2 A. He might have, but I'm not sure, I don't</p> <p>3 remember exactly what was said.</p> <p>4 Q. Okay, and did anyone in the courtroom ask</p> <p>5 you questions before he made that statement?</p> <p>6 A. I'm not sure, I can remember a lot of</p> <p>7 stuff going on, you know, and stuff like that, a</p> <p>8 lot of things being said, but directed to me I</p> <p>9 can't remember.</p> <p>10 Q. Do you recall speaking at that hearing</p> <p>11 yourself?</p> <p>12 A. Yeah.</p> <p>13 Q. Okay, and before that hearing, how much</p> <p>14 time had you spent in a courtroom?</p> <p>15 A. Just the time that we spent during the</p> <p>16 hearing itself, you know, when the court case</p> <p>17 itself was going on.</p> <p>18 Q. And in your experience in the courtroom,</p> <p>19 did you just start speaking on your own or did</p> <p>20 someone direct a question to you and then you</p> <p>21 would respond?</p> <p>22 A. No, somebody directed a question and then</p> <p>23 I responded.</p> <p>24 Q. So, were you sitting in what you thought</p>
<p style="text-align: right;">45</p> <p>1 exactly what was going on and stuff like that as</p> <p>2 far as how much I was getting, and you know, you</p> <p>3 know, and stuff like that, what my intentions were</p> <p>4 and stuff like that.</p> <p>5 Q. Okay. At that hearing where the judge</p> <p>6 appointed the guardian, do you recall that</p> <p>7 hearing, what happened there?</p> <p>8 A. Certain parts of it, yeah.</p> <p>9 Q. Okay. Do you recall who was there</p> <p>10 representing you at that hearing?</p> <p>11 A. Latti & Associates was one of the people,</p> <p>12 I'm not sure, I don't remember who it was.</p> <p>13 Q. Did you ever meet Mr. Latti?</p> <p>14 A. Himself, yeah.</p> <p>15 Q. Okay. Did he handle your trial?</p> <p>16 A. Not himself, no.</p> <p>17 Q. But someone from his office did?</p> <p>18 A. Right.</p> <p>19 Q. Okay.</p> <p>20 A. There was two of them, two people</p> <p>21 actually from his office.</p> <p>22 Q. And at the hearing where the judge</p> <p>23 appointed the guardian, you were represented by</p> <p>24 counsel from Mr. Latti's office or Latti &</p>	<p style="text-align: right;">48</p> <p>1 was a witness chair at the time that the judge</p> <p>2 made his statement that he had concerns about your</p> <p>3 understanding of the case?</p> <p>4 A. I was sitting in the witness chair.</p> <p>5 Q. Okay, and before that, you were sitting</p> <p>6 at counsel table?</p> <p>7 A. Right.</p> <p>8 Q. What we call counsel table, it's where</p> <p>9 the attorneys sit?</p> <p>10 A. Right.</p> <p>11 Q. Okay. So, at some point during that</p> <p>12 hearing, you moved from counsel table up to the</p> <p>13 witness chair?</p> <p>14 A. Right.</p> <p>15 Q. And I assume someone asked you to do</p> <p>16 that?</p> <p>17 A. Right.</p> <p>18 Q. Do you recall who asked you to do that?</p> <p>19 A. No.</p> <p>20 Q. Okay, but you do recall that your</p> <p>21 attorney was present at that hearing?</p> <p>22 A. Right, right.</p> <p>23 Q. Did he say anything to you after the</p> <p>24 hearing, after the judge said he had concerns?</p>
<p style="text-align: right;">46</p> <p>1 Associates?</p> <p>2 A. Right.</p> <p>3 Q. And would it be fair to say</p> <p>4 that -- strike that.</p> <p>5 Was it your understanding based on what</p> <p>6 happened at that meeting that the judge had</p> <p>7 concerns about your ability to understand the</p> <p>8 settlement?</p> <p>9 A. Right, or the amount that we were</p> <p>10 getting, right.</p> <p>11 Q. And do you recall what words the judge</p> <p>12 used to tell you that he had that concern?</p> <p>13 A. That's about the way he put it to me, he</p> <p>14 says, he was kind of a funny guy actually, "You're</p> <p>15 not sure on exactly how much you're getting?" and</p> <p>16 then he turned to the lawyers, and he says,</p> <p>17 "Well," he says, "This is as far as this is going</p> <p>18 to go," he says, "We've got to find somebody to</p> <p>19 make sure exactly what Mr. Dimon knows what's</p> <p>20 going on," you know, and that was more or less the</p> <p>21 end of it from there.</p> <p>22 He didn't let me testify, you know, let</p> <p>23 me say anything more after that.</p> <p>24 Q. Okay, and before he made that statement,</p>	<p style="text-align: right;">49</p> <p>1 A. Um, not really, that we had to go to, you</p> <p>2 know, a different place and talk to this person</p> <p>3 and stuff like that. That was about, about it.</p> <p>4 Q. Okay. Did you go talk to Mr. Decof or</p> <p>5 the guardian the same day of the hearing?</p> <p>6 A. I think it was, yeah.</p> <p>7 Q. How did you feel about the court's</p> <p>8 decision to appoint a guardian for you?</p> <p>9 A. How did I feel? It didn't matter to me,</p> <p>10 you know. At that time, I mean they were only</p> <p>11 looking out for my benefit, you know, and stuff.</p> <p>12 That's the way I saw it.</p> <p>13 Q. Okay. Was it your understanding that</p> <p>14 that was the job of the guardian, to look out for</p> <p>15 your best interest?</p> <p>16 A. Yeah, I would say so, yes.</p> <p>17 Q. Okay. Did you understand that it was</p> <p>18 also your attorney's job to look out for your best</p> <p>19 interest?</p> <p>20 A. Yes.</p> <p>21 Q. Okay, and to do what you asked him to do?</p> <p>22 A. Yeah.</p> <p>23 Q. And to give you advice about what to do?</p> <p>24 A. Right.</p>

<p style="text-align: right;">50</p> <p>1 Q. When you were having meetings with your 2 attorney -- I guess first, let me ask, did you 3 have meetings with your attorney before trial in 4 the Jenny C. matter? 5 A. Oh, yeah, yeah. 6 Q. Okay. How often did you meet with your 7 attorney back then? 8 A. Well, for the simple fact we lived so far 9 away and stuff, it was probably, like, three or 10 four times, you know, within the course of a month 11 or something like that or a week. 12 Q. And who attended those meetings with you 13 if anyone? 14 A. My wife or my mother. 15 Q. Okay. Sometimes both? 16 A. Right. 17 Q. Okay, and during these meetings with your 18 attorney before the trial, did you ever tell him 19 or her -- were all your attorneys at that time 20 men? 21 A. Yeah. 22 Q. Did you ever tell your attorney "I can't 23 read"? 24 A. Yes, oh, yes.</p>	<p style="text-align: right;">53</p> <p>1 A. When we'd go to his, Latti's office 2 himself in Boston, I didn't have much, but when we 3 was meeting in Providence, it was basically 4 through him. 5 Q. So, when you went to the Latti offices in 6 Boston, what attorney would you meet with there? 7 A. I'd meet with Mr. Latti himself. 8 Q. Did you consider Mr. Latti to be your 9 attorney? 10 A. Um, well, it's like every other 11 attorneys, you know, they got people underneath of 12 them too, you know. He was the main person that 13 was supposed to have gone through everything, you 14 know, so, he was most of the ones I was relying 15 on. 16 Q. Okay. When you say he was the main 17 person, was it your understanding that he was 18 overseeing the case? 19 A. Right, in his own standards, right. 20 Q. So, he was, in commercial fishing jargon, 21 he was the captain of Latti & Associates? 22 A. Right. 23 Q. He ran the ship? 24 MR. DeWICK: Objection.</p>
<p style="text-align: right;">51</p> <p>1 Q. And "I have difficulty writing"? 2 A. Oh, yeah, that came out the first time. 3 Q. In your first meeting? 4 A. Yeah. 5 Q. So, would it be fair to say that your 6 attorneys knew right off the bat that you had some 7 difficulty with reading and writing? 8 A. Oh, yeah. I imagine my mother said that 9 to him too, you know, when she called them, I 10 imagine she said it too. 11 Q. And if your attorney handed you a 12 document, would you read it, pretend to read it, 13 or would you hand it off to your wife to read it? 14 A. No, no, either he'd read it to me or my 15 wife would, one or the other. Most of the time 16 he'd read it to me. 17 Q. Would he read it to you in the way that 18 someone might hand someone a document and kind of 19 say this means X, or would he actually read the 20 document to you? 21 A. He'd actually read it to me, and he'd 22 also hand a copy to my wife or something like that 23 and have her go along with him and stuff like that 24 to make sure, you know, everyone was word to word.</p>	<p style="text-align: right;">54</p> <p>1 BY MR. LeBLANC: 2 A. Yeah. 3 Q. And just so you know, Mr. Dimon, 4 Mr. DeWick made an objection. 5 A. Right. 6 Q. If we have any discussions about that, 7 you should probably hold off your answer until we 8 can resolve that. 9 A. Okay. 10 Q. And if we need to, we'll ask you to 11 answer the question, and if there is some other 12 resolution, then we'll let you know. 13 A. Hmm mmm. 14 Q. Now, did Mr. Latti ever come down to 15 Rhode Island to meet you there? 16 A. No. 17 Q. Okay. Mr. Hughes did? 18 A. Right. 19 Q. Do you recall meeting any other attorneys 20 from Latti & Associates? 21 A. Not that wasn't familiar with the case 22 itself, no. 23 Q. Okay. Does the name Flannery ring a 24 bell?</p>
<p style="text-align: right;">52</p> <p>1 Q. Okay, and this was before the Jenny C. 2 ever went to trial, right? 3 A. Right. 4 Q. If you recall, did your attorney have any 5 reaction to a guardian being appointed on your 6 behalf? 7 A. No, not that I can remember, no. 8 Q. During the time of the Jenny C. trial, 9 did you, when you had meetings or needed to 10 contact your attorney, who would you call? 11 A. Latti & Associates themselves in Boston. 12 Q. Okay, and would you ask for a specific 13 attorney or just say "This is Dennis calling"? 14 A. At that time, we'd ask for the attorney 15 that was handling the case. 16 Q. Okay. Do you remember who that person 17 was? 18 A. I remember his first name was Roger or 19 something like that, I'm not sure. 20 Q. Okay. Does the name Roger Hughes ring a 21 bell? 22 A. Yeah, yeah. 23 Q. Okay. How much interaction did you have 24 with Mr. Hughes back in 1982, '83?</p>	<p style="text-align: right;">55</p> <p>1 A. No, not really. 2 Q. Okay. 3 A. I did meet his daughter when we settled 4 the case, I'm not sure of her name now. 5 Q. And whose daughter was that? 6 A. Mr. Latti's daughter. 7 Q. Okay, and when you say you met his 8 daughter? 9 A. It was just briefly actually, you know, 10 Mr. Latti introduced us, you know, and that was 11 about the size of it. My wife talked to her, you 12 know, quite a bit on the phone about, you know, 13 certain things and stuff. 14 Q. And -- 15 MR. LeBLANC: If I said anything, 16 strike that because I forgot what it was at this 17 point. 18 BY MR. LeBLANC: 19 Q. Who did you understand Mr. Latti's 20 daughter to be? 21 A. At that time, probably just an associate 22 at that time. 23 Q. You knew she was an attorney? 24 A. Yeah.</p>

<p style="text-align: right;">56</p> <p>1 Q. Okay. Is his daughter different from 2 Carolyn Latti? 3 A. I don't know. Like I said, I can't 4 really remember her name, so. 5 Q. Okay, but Mr. Latti identified her as his 6 daughter? 7 A. Right. 8 Q. And did she do any work on your case? 9 A. Not that I know of. 10 Q. Okay. Then why would your wife be 11 calling her? 12 A. This was, this would be after the fact, 13 you know, after the checks stopped and stuff like 14 that, that was the only person to contact because 15 from what we understood, that he retired at that 16 time. 17 Q. Okay. 18 A. I don't know exactly when he retired. 19 Q. So, when you first met Mr. Latti's 20 daughter, what time period was that? 21 A. That was when we had settled the case, 22 and I went up to sign the papers and stuff like 23 that for the, the insurance policies and stuff. 24 Q. Okay. Was that in 1983?</p>	<p style="text-align: right;">59</p> <p>1 Q. Have you ever been in court on any kind 2 of issue other than with Jenny C.? 3 A. Just with the separation with my wife. 4 Q. Okay. You went to court for that? 5 A. Yeah, that was just minor stuff actually. 6 Q. Did it revolve around child support kind 7 of issues or visitation, or? 8 A. It was child support and stuff, and stuff 9 like that, but. 10 Q. Okay. 11 A. It never went anywhere because we wound 12 up getting back together anyways, so. 13 Q. Okay. Did you do anything to prepare for 14 today's deposition? 15 A. Just went over a little bit in David's 16 office, my lawyer's office, that's all. 17 Q. And when you say we went over a little 18 bit, what does that mean? 19 A. Just what was going to be said and stuff 20 like that, you know, in a deposition, that's all. 21 MR. KEANE: I'm preparing. 22 MR. LeBLANC: Okay. 23 BY MR. LeBLANC: 24 Q. When Mr. Keane just said he was</p>
<p style="text-align: right;">57</p> <p>1 A. Right. 2 Q. Have you ever been a party to a lawsuit 3 other than this one or the Jenny C. matter? 4 A. No. 5 Q. Have you ever testified in court? 6 A. No. 7 Q. Other than in the Jenny C. trial? 8 A. Right. 9 Q. Have you ever given a deposition other 10 than today? 11 A. Just during the, you know, the case with 12 the Jenny C. 13 Q. And do you remember where that deposition 14 was taken? 15 A. Um, no, I don't. 16 Q. Other than your attorney being in Boston, 17 do you recall anything else happening in this case 18 in Boston, in Massachusetts? 19 A. I was in the hospital, I was in Boston 20 Ear & Eye Infirmary, that's about it. 21 Q. That was it, huh. Have you ever signed 22 an affidavit? 23 A. Affidavit, or? 24 Q. Okay. I'll describe what I consider an</p>	<p style="text-align: right;">60</p> <p>1 preparing, my suspicion is that he may have wanted 2 to make an objection or may want to make an 3 objection, okay, so, let me just caution you right 4 now what you say to your lawyer may be 5 confidential, okay, so, when I ask you questions 6 that relate to that, you might want to give him an 7 opportunity to interpose an objection before you 8 answer, okay? 9 A. Okay. 10 MR. KEANE: Thank you, Peter. 11 MR. LeBLANC: Your welcome. 12 BY MR. LeBLANC: 13 Q. When you went over stuff at your 14 attorney's office, did you look at any documents? 15 A. We looked at a couple of things, yeah. 16 Q. Do you recall what they were? 17 A. Just some papers that I signed and stuff 18 like that, that's about all. I don't remember 19 exactly what they were, but. 20 Q. Okay. When you say papers that I signed, 21 were they papers you signed a long time ago or 22 papers you signed the day you had the meeting? 23 A. No, papers that I signed a long time ago. 24 Q. Okay, and did anyone else attend this</p>
<p style="text-align: right;">58</p> <p>1 affidavit to be, and you tell me if you ever 2 signed that. It's a document that states some 3 facts and that you sign under oath that they're 4 true and accurate. 5 A. Yeah. 6 Q. Have you ever signed a document like 7 that? 8 A. Yeah. 9 Q. Okay, and for what purpose did you sign 10 that document? 11 A. Um, it was all to do with the case, all 12 the documents that, you know, needed to be signed 13 for the lawyers and stuff like that, you know, 14 giving them power of attorney. 15 Q. Okay, and when you say the case, do you 16 mean the Jenny C. case? 17 A. The Jenny C. case, right. 18 Q. Okay. Other than kind of minor traffic 19 offenses, have you ever been charged with 20 violating any law? 21 A. No, not really. 22 Q. Okay. When you say no, not really, does 23 that mean no? 24 A. No.</p>	<p style="text-align: right;">61</p> <p>1 meeting with you? 2 A. My wife. 3 Q. And when you went and had your 4 discussions with your attorney, without revealing 5 what was said, was your wife present? 6 A. Yes. 7 Q. Was anyone else present? 8 A. Fred Benson. 9 Q. Okay. So -- 10 A. He was in the office there with us, yeah. 11 Q. Okay. When you said he was in the office 12 there, does that mean that he was in the same 13 office you were in? 14 A. Right, right. 15 Q. Or just in the office building? 16 A. No, he was in the same office that we 17 were in. 18 Q. Okay. So, it was you, your wife, 19 Mr. Benson, and an attorney from the Kaplan/Bond 20 Group all sitting in the same office discussing 21 your case? 22 A. Right, right. 23 Q. Okay, and can you describe your 24 relationship with Mr. Benson?</p>

<p style="text-align: right;">62</p> <p>1 A. You know, real good friends and stuff, 2 worked with him for over five years on the boat, 3 and you know, got a pretty close friendship. You 4 know, he's done a lot for me and even in the past 5 years and stuff like that. 6 Q. Okay. Does your brother work for 7 Mr. Benson right now? 8 A. No, no. 9 Q. And how long was the meeting with your 10 attorney to prepare for today's deposition? 11 A. Not very long, maybe an hour. 12 Q. Okay. Did you take any notes during that 13 meeting or did anyone take any notes? 14 A. Not, David did, that's about all, my 15 lawyer. 16 Q. So, when you say David, are you referring 17 to Mr. Kaplan? 18 A. Right. 19 Q. Okay. Did your wife take any notes on 20 your behalf? 21 A. No. 22 Q. Mr. Benson? 23 A. No. 24 Q. And that meeting with your attorney to</p>	<p style="text-align: right;">65</p> <p>1 people were going to get sued for it and stuff 2 like that, and that was about it. 3 Q. Okay, and do you recall what he said to 4 you? 5 A. He said, "That's good if you can get 6 anything out of it, go for it" he says, you know. 7 Q. How about your brother, John, what did 8 you say to him about the case? 9 A. Basically about the same thing. He said, 10 "Oh, well." He ain't a man of very words, a lot 11 of words, let's put it that way. 12 Q. Okay. Now, over the years, you've had 13 reason to contact MetLife about the annuity, is 14 that true? 15 A. Hmm mmm. 16 Q. Okay, and do you recall who at MetLife 17 you spoke with or contacted? 18 A. I can't remember her name right offhand, 19 no. Mostly it was a representative of MetLife. 20 Q. Okay, and did anyone else contact anyone 21 at MetLife on your behalf? 22 A. My wife did most of the time. 23 Q. Okay, and how did she get in touch with 24 the people at MetLife?</p>
<p style="text-align: right;">63</p> <p>1 prepare for today's deposition, when did that 2 happen? 3 A. Um, a couple weeks ago. 4 Q. Okay, and after that, did you have any 5 other meetings to prepare for today's deposition? 6 A. Not to prepare for this, no, just to sign 7 over power of attorney to him, that's all. 8 Q. Did you discuss your testimony here today 9 with anyone else other than those three 10 individuals? 11 A. No. 12 Q. And you understand when I say those three 13 individuals, I mean your wife, Mr. Benson, and 14 Mr. Kaplan? 15 A. Right. 16 Q. Okay. Do you have copies of the 17 documents you looked at to prepare for today's 18 deposition? 19 A. I don't myself, no. 20 Q. Have you discussed this lawsuit with 21 anyone other than your attorney? 22 A. You mean from year one, from the first 23 year you mean? 24 Q. No, from the time, the present time, from</p>	<p style="text-align: right;">66</p> <p>1 A. Over the phone. 2 Q. And would she call them because you 3 requested that she call them or would she just do 4 it on her own? 5 A. On my request. 6 Q. Okay. 7 MR. LeBLANC: Can you mark this as 8 Exhibit 15, please. 9 (Exhibit No. 15, Fax dated 6/12/03, 10 marked for identification.) 11 MR. LeBLANC: We're going to go off 12 record for a couple of minutes, Tim, okay? 13 MR. O'DRISCOLL: Okay. 14 (A short break was taken.) 15 MR. LeBLANC: Let's go back on 16 record. Mr. O'Driscoll, are you still with us? 17 MR. O'DRISCOLL: Yes. 18 MR. LeBLANC: Okay. 19 BY MR. LeBLANC: 20 Q. Mr. Dimon, during your meetings with 21 Mr. Kaplan that were attended by Mr. Benson and 22 your wife, can you tell me what was said during 23 those meetings? 24</p>
<p style="text-align: right;">64</p> <p>1 this lawsuit meaning your case against MetLife? 2 A. Oh, this one here, very few people. 3 Q. Okay, and who are they? 4 A. Just, you know, brothers and stuff like 5 that. 6 Q. And what are your brother's names? 7 A. My brother, John. 8 Q. John Dimon? 9 A. Right, and Louis Dimon, Sr. 10 Q. Okay, and which of these brothers lives 11 on Laura Lane? 12 A. John. 13 Q. Okay. 14 A. I don't really talk to him that much, so, 15 what I have said to him is brief anyways. 16 Q. Okay, and does Louis live in Wakefield? 17 A. Yeah, he lives in Wakefield, I'm not sure 18 of the address. 19 Q. Okay, and what kind of discussions did 20 you have with Louis about the case? 21 A. Just went over, you know, a few things, 22 nothing drastic, let's put it that way. 23 Q. Do you recall what you said to him? 24 A. Oh, just, you know, you know, a few</p>	<p style="text-align: right;">67</p> <p>1 MR. KEANE: I'm going to object to 2 that question, and I'm also going to instruct 3 Mr. Dimon not to answer that question. 4 MR. LeBLANC: Okay. 5 BY MR. LeBLANC: 6 Q. Mr. Dimon, your attorney has instructed 7 you not to answer that question. Are you going to 8 accept his instruction and not answer? 9 A. Yeah. 10 Q. Okay. 11 MR. LeBLANC: Then we're going to 12 suspend on that issue and come back to it. 13 MR. KEANE: I'll object to the 14 suspension of the depo on that issue. 15 MR. LeBLANC: Okay. Before we took a 16 break, I had asked that Exhibit 15 be marked, and 17 for the record, I'm going to describe it as a 18 faxed cover sheet, a letter dated June 9th, 2003 19 from MetLife to Mr. Dimon, a document on the Dean 20 Witter Reynolds letterhead, what appears to be 21 Dean Witter Reynolds letterhead entitled "Proposal 22 by Charter Security Life Insurance Company of New 23 Jersey." 24</p>

<p style="text-align: right;">68</p> <p>1 MR. KEANE: I'm sorry, that's not 2 what we have. 3 MS. McQUAY: That's not what I have. 4 MR. KEANE: It's a copy of a fax to 5 Latti. 6 MR. LeBLANC: Yes, and then the 7 June 9th, 2003 letter, proposal sheet and 8 June 12th, 2003 letter from Dennis Dimon. 9 MR. KEANE: Thank you. 10 MR. LeBLANC: Does everyone have 11 that? 12 MR. DeWICK: Yes. 13 MS. McQUAY: Yes. 14 MR. LeBLANC: Okay. 15 BY MR. LeBLANC: 16 Q. Mr. Dimon, I'll hand you what was marked 17 as Exhibit 15. Can you take a look at those 18 documents for me, please? 19 MR. KEANE: Can we go off the record 20 for one second? 21 MR. LeBLANC: Sure. 22 (Off the record.) 23 MR. LeBLANC: Back on record. 24 MR. KEANE: Yes.</p>	<p style="text-align: right;">71</p> <p>1 is? 2 A. That would have been his daughter, right. 3 Q. Okay, and you see the date here, it's 4 June 12th, 2003? 5 A. Right. 6 Q. And the next page of that exhibit is a 7 June 9th, 2003 letter from MetLife to Dennis 8 Dimon, do you see that? 9 A. Right. 10 Q. And it's addressed to P.O. Box 56, West 11 Kingston, Rhode Island? 12 A. Hmm mmm. 13 Q. Is that your mailing address? 14 A. Right. 15 Q. Okay, and in 2003, was that your mailing 16 address? 17 A. Yeah. 18 Q. If you received a letter like this, who 19 would have read that to you? 20 A. My wife. 21 Q. Okay, and you see that there is a 22 handwritten section on here, "ATT Carolyn Latti"? 23 A. Uh-huh. 24 Q. Do you know who wrote that on there?</p>
<p style="text-align: right;">69</p> <p>1 BY MR. LeBLANC: 2 Q. Mr. Dimon, do you recognize these 3 documents we have marked as Exhibit 15? 4 A. Only one of them. 5 Q. And which one of them did you recognize? 6 A. Stating on how much I was going to get 7 per month and the policy, supposedly the policy 8 itself on what I was going to receive. 9 Q. And right now for the record, you're 10 looking at the document entitled "Proposal by 11 Charter Security Life Insurance Company of New 12 Jersey"? 13 A. Right. 14 Q. The document that's on the Dean Witter 15 Reynolds letterhead or what appears to be? 16 A. Right. 17 Q. So, you recognize that document? 18 A. Right. 19 Q. Page 3 of Exhibit 15? 20 A. I think that's what it is, yes. 21 Q. Okay. You don't recognize any of the 22 other documents in that packet? 23 A. Not right off. 24 Q. And I'll just read a portion of Exhibit</p>	<p style="text-align: right;">72</p> <p>1 A. No. 2 Q. And just a question for clarification, 3 physically, can you see the words on the page? 4 A. Yes. 5 Q. So, your vision is okay? 6 A. Right. 7 Q. And do you see here, it says Sandy 8 Franklin, Annuity Payout Specialist III? 9 A. Hmm mmm. 10 Q. Do you recall having any discussions with 11 Ms. Franklin? 12 A. I might have talked to her on the phone 13 briefly, that's about all, if that's the same one 14 that I talked to on the phone. 15 Q. So, you don't have a specific 16 recollection about who that was? 17 A. Right. 18 Q. Okay, and just kind of off subject a 19 little bit, when your wife called MetLife on your 20 behalf, did she use a speaker phone or just a 21 regular phone with a handset? 22 A. Just a regular phone, but I was present 23 in the room sometimes, not all the time because 24 sometimes I was out fishing on some of the</p>
<p style="text-align: right;">70</p> <p>1 15, the first page to you with the title fax on 2 the top in a black box, do you see that? 3 A. Hmm mmm. 4 MR. LeBLANC: And for the record, I'm 5 pointing at the words that I'm reading, and I 6 believe the witness is responding to that. 7 BY MR. LeBLANC: 8 Q. Is that true? 9 A. Right. 10 Q. Okay, and then the word "i copy"? 11 A. Hmm mmm. 12 Q. Is i copy a copy business in Rhode 13 Island? 14 A. I think so. 15 Q. Okay, and above that lists the address 16 99 Fortin Road in Kingston, Rhode Island? 17 A. Yeah, okay. 18 Q. Are you familiar with this business? 19 A. Um, myself, no. My wife must have used 20 it to fax papers I guess. 21 Q. And in the heading section, it's to 22 Carolyn Latti from Dennis Dimon. 23 A. Okay, yeah, now I remember. 24 Q. Okay. Do you recall who Carolyn Latti</p>	<p style="text-align: right;">73</p> <p>1 conversations that was said between MetLife and my 2 wife. 3 Q. Okay, and when you were present in the 4 room, could you hear both sides of the 5 conversation or just your wife's side? 6 A. Just my wife's side. 7 Q. Okay. I'll read to you the first line of 8 this letter, "This letter is in response to a 9 phone call we received from Katherine Dimon." 10 A. Yeah. 11 Q. Okay. Was it your understanding that 12 they sent this letter to you because your wife 13 called? 14 A. Right, or I had her call, right. 15 Q. Or you asked her to call? 16 A. Right. 17 Q. The next line says "Since your annuity 18 contract has expired, we are unable to provide you 19 with a duplicate contract." Next line, "However, 20 the terms of your annuity are described below." 21 Now, what does that, those two lines 22 together mean to you? 23 A. That they were going to send me some 24 paperwork regarding the contract.</p>

<p style="text-align: right;">74</p> <p>1 Q. Okay. Where it says "Since your annuity 2 contract has expired," did you take that to mean 3 that your annuity was done? 4 A. No, not really, not at that time because 5 we thought, you know, there was a mistake 6 somewhere along the line, you know, because it was 7 supposed to last me the rest of my life. 8 Q. Okay. 9 MR. LeBLANC: Mr. Dimon, do you need 10 a napkin at all? 11 THE WITNESS: Oh, for my eye? 12 MR. LeBLANC: A tissue for your eye? 13 THE WITNESS: I'll have to go. 14 MR. LeBLANC: I can run and grab it 15 for you if you need one. 16 THE WITNESS: Well, I can't see what 17 I'm doing to clean it out. 18 MR. LeBLANC: Do you want a minute to 19 do that? 20 THE WITNESS: Yeah, please. 21 MR. LeBLANC: Can we go off record 22 for a minute, please. 23 (Off the record.) 24</p>	<p style="text-align: right;">77</p> <p>1 mean to you? 2 A. The plan, the policy or whatever. 3 Q. Okay, and what did this plan or policy 4 give you, what benefit? 5 A. Um, the money I guess. 6 Q. So, your understanding from the plan or 7 policy or the term annuity is that it would 8 provide you with some amount of money? 9 A. Right. 10 Q. Okay. The next line here says "American 11 Motorist Insurance Company was considered to be 12 the owner of the annuity, however, you were the 13 annuitant and payee." 14 Do you have any specific understanding of 15 what that means, what that sentence means? 16 A. Well, they were the people that was 17 paying me, American Motors. I'm the payee, right, 18 and they're the payee. 19 Q. Who did you understand American Motorist 20 Insurance Company to be, how did they become 21 involved? 22 A. They were the first policyholders that 23 handled, you know, the annuity policy. 24 Q. Okay. Were they an insurance company</p>
<p style="text-align: right;">75</p> <p>1 MR. LeBLANC: Why don't we go back on 2 record. 3 BY MR. LeBLANC: 4 Q. Mr. Dimon, you just testified that there 5 was a mistake made along the line, along the way? 6 A. That's, that's the way I took it, yes. 7 Q. Okay. When did you first come to the 8 conclusion that there was a mistake made? 9 A. It was right after the checks had stopped 10 and I had gotten in touch with MetLife, and you 11 know, they stated that, you know, there was no 12 more funds or whatever it was, and I told them, I 13 said, "Well, you must have made a mistake because 14 the way it was discussed to me was that, you know, 15 that I was supposed to receive this for the rest 16 of my life and the twenty years was intended for 17 my wife, if something had happened to me, she'd be 18 able to receive it for the twenty years and then 19 stop," and, but, as far as I'm concerned as long 20 as I was alive, it was supposed to continue for 21 the rest of my life. 22 Q. Okay, and by June 9th, 2003, the date of 23 this letter in Exhibit 15, how late was or how 24 much time before this letter was written did you</p>	<p style="text-align: right;">78</p> <p>1 that was involved in the Jenny C. matter? 2 A. Not to my, you know, I'm not sure on any 3 of that part what was going on there because 4 Mr. Latti set this all up through, you know, I 5 guess through whatever he had powers to do, you 6 know. 7 I'm not sure on how this came about 8 myself. 9 Q. When you say Mr. Latti set this all up, 10 are you referring to the settlement in the 11 Jenny C.? 12 A. Right. 13 Q. Okay, and when you refer to Mr. Latti, 14 are you referring to him as an individual or him 15 as the firm? 16 A. Well, I'm referring to him himself, you 17 know. Otherwise, I'd say Latti & Associates, you 18 know. 19 Q. Okay, and I'll skip down to the third 20 paragraph, it says "The first payment was on 21 June 5, 1983." Do you recall getting a payment 22 way back then? 23 A. I remember getting a check, yes. 24 Q. The final payment was on May 5th, 2003.</p>
<p style="text-align: right;">76</p> <p>1 expect to receive a check? 2 A. Well, this letter was written after the 3 checks had already stopped. 4 Q. And when did the checks stop? 5 A. Um, I'm not sure of the date right now. 6 Q. And what date in the month did you 7 receive the checks generally? 8 A. It was most generally the end of every 9 month, it was, like, the 5th of every month or 10 something like that, the beginning of the month. 11 Q. Okay. So, you received or did you 12 receive a check in May of 2003? 13 A. No, not that I know of. 14 Q. Did you receive a check in June of 2003? 15 A. Like I said, I can't really remember. 16 Q. Okay, and going back to the second page 17 of Exhibit 15, I'll read that first line, "The 18 annuity contract was issued on May 5, 1983 under 19 the, quote, 20," excuse me, "under the, quote, 20 "certain 20-year" option." 21 Did you understand that your annuity 22 started in May of 1983? 23 A. Yeah. 24 Q. And when I say annuity, what does that</p>	<p style="text-align: right;">79</p> <p>1 Does that lead you to believe that you received a 2 check in May of 2003? 3 A. Yeah. 4 Q. Okay. Would it be fair to say that you 5 received twenty years of payments from MetLife on 6 this annuity? 7 A. I'm not sure what you're saying. 8 Q. Okay. Did you receive checks once a 9 month from MetLife for twenty years? 10 A. Not for the full twenty years, not from 11 MetLife itself. 12 Q. Okay. Then did you receive checks once a 13 month from any source for twenty years? 14 A. Yeah. 15 Q. And were the first checks you received, 16 are those initial checks from a different company 17 other than MetLife? 18 A. Yes. 19 Q. And what was that company's name? 20 A. I'm not quite sure, I know American 21 Motors or one was Charter Life Insurance, the 22 other one I'm not sure of to tell you the truth. 23 Q. So, when you see here, it says "The final 24 payment was on May 5, 2003." After June 9th of</p>

<p style="text-align: center;">80</p> <p>1 2003 or as of June 9th, 2003, you understood that 2 you weren't going to be getting any other checks 3 from MetLife?</p> <p>4 A. As far as I know, yeah, unless something 5 was wrong, you know, and this is what we tried to 6 get down to the bottom of when we did call.</p> <p>7 Q. Okay, and after you received this letter 8 dated June 9th, 2003, what did you do?</p> <p>9 A. Well, we turned around and once we found 10 out this had stopped, we contacted Latti's office, 11 my wife did, and talked to Mr. Latti's daughter. 12 Like I said, the name, but, and she 13 turned around and said there wasn't much that she 14 could do for us, and we asked her, you know, if 15 she still had records, you know, on policy and 16 stuff like that, if she could send us any, and she 17 said they had already been destroyed because they 18 don't hold any policies after twenty years, which, 19 you know, a few friends of mine that I did talk to 20 about it thought it was kind of weird seeing it 21 was supposed to have been a lifetime policy, and 22 then after that, there wasn't much we could do, 23 and you know, we started contacting a few people 24 to find out if we could find anywhere where the</p>	<p style="text-align: center;">83</p> <p>1 word of what I had with Mr. Latti, you know, and 2 that was the only word I had and that paper that 3 you saw there with the amounts I was supposed to 4 get each year, that was it, so, and now we're 5 here.</p> <p>6 Q. Okay. When you were testifying, you said 7 he couldn't help me. Who was the he you were 8 referring to?</p> <p>9 A. Um, I'm not sure of the guy's name, it 10 was a company or something. My wife might 11 remember it, I don't know, but I'm not sure. 12 It was a company or somebody that she 13 could get ahold of and track it down maybe. Like 14 I said, she might remember, I don't know.</p> <p>15 Q. Okay.</p> <p>16 A. I was in and out from fishing so much 17 that, you know, she was handling most of it. I 18 was only getting in between what she would tell me 19 when I got back home from fishing. You know, that 20 was my extent what I could do with it, you know.</p> <p>21 Q. Okay. You also testified that 22 Mr. Latti's daughter told your wife that the 23 records were destroyed.</p> <p>24 A. Right.</p>
<p style="text-align: center;">81</p> <p>1 policy did go, and you know, and actual, I can't 2 think of what I want to say, you know, actually 3 proof of what was happening anyways.</p> <p>4 We were looking for the originals, that's 5 what we were looking for, and we never found any 6 originals.</p> <p>7 Q. Okay. When you say we looked, who 8 looked?</p> <p>9 A. Well, my wife was calling a few people 10 that we were getting names of that we could 11 contact that could probably help us track it down 12 and stuff, and I'm not sure on who she got ahold 13 of.</p> <p>14 I know there was one person that might 15 have had a chance of tracking it down, but we 16 couldn't find, we needed the check stub number, 17 you know, the check number to go back to American 18 Motors, which American Motors had gone out of 19 business at that time, and seeing how we couldn't 20 find any check, you know, numbers or anything else 21 like that, or policy numbers, there was nothing he 22 could do for us.</p> <p>23 So, that was the extent to that because 24 we couldn't find any, you know, check stubs and</p>	<p style="text-align: center;">84</p> <p>1 Q. Okay. Were you present during that 2 telephone conversation?</p> <p>3 A. Yeah.</p> <p>4 Q. Okay, and do you know who used the phrase 5 destroyed?</p> <p>6 A. Um, I think she did.</p> <p>7 Q. She being --</p> <p>8 A. You know --</p> <p>9 Q. -- Mr. Latti's daughter?</p> <p>10 A. Yeah, right. I think that's the way she 11 worded it. I'm not quite sure.</p> <p>12 Q. Did your wife use the phrase destroyed?</p> <p>13 A. Yeah, she did, right.</p> <p>14 Q. Okay.</p> <p>15 A. She said, my wife had said that she said 16 that they, they were destroyed or something, 17 that's the way my wife put it to me.</p> <p>18 Q. And during your conversations where your 19 wife would make a telephone call on your behalf, 20 would it be that she would talk to the person on 21 the phone and as she was talking to that person, 22 she would communicate to you what was being said?</p> <p>23 A. Right.</p> <p>24 Q. So, it wasn't like she had a whole</p>
<p style="text-align: center;">82</p> <p>1 stuff like that, you know, so, he couldn't help us 2 at all, and then from there, it just went away for 3 a while.</p> <p>4 We never really proceeded it that much, 5 and then Fred Benson asked if he could look into a 6 few things because I talked to him about, you 7 know, American Motors going out of business, 8 whether he could find, because he's better at the 9 computer than I am, whether he could find out any 10 information, you know, on what happened to the 11 business, if they changed names or anything else 12 like that, and he did find they went out of 13 business for me, you know, and he looked into a 14 few other things for me and stuff like that, but 15 then it got to the point where I wasn't getting 16 any answers or anything else like that and had to 17 turn somewhere.</p> <p>18 So, and then Mr. Benson referred me to 19 David, my lawyer, to see what I could find out and 20 where these records are and stuff like that on, 21 you know, because I was in the dark.</p> <p>22 You know, I had no way of knowing what 23 originally the policy said right from the 24 beginning and everything else like that, only the</p>	<p style="text-align: center;">85</p> <p>1 conversation, hung up the phone, and then told you 2 everything that happened?</p> <p>3 A. Right.</p> <p>4 Q. Did you have a chance to have any kind of 5 input, like, if she was on the phone with 6 Mr. Latti's daughter and she said "Dennis, the 7 records were destroyed" or "Dennis, she told me 8 the records were destroyed," would you have a 9 chance to say "What does she mean by that?"</p> <p>10 A. To my wife?</p> <p>11 Q. Yes.</p> <p>12 A. Yeah.</p> <p>13 Q. And what would your wife do with that 14 information?</p> <p>15 A. Um, what do you mean what would she do 16 with it, I mean?</p> <p>17 Q. Would she tell the person on the phone 18 "Dennis wants to know what you mean" or "What do 19 you mean by that?"</p> <p>20 A. Oh, yeah, she asked them why were they 21 destroyed, let's put it that way, and that's when 22 she replied they only kept records for up to 23 twenty years.</p> <p>24 Q. Okay. So, when you say she replied "They</p>

<p style="text-align: right;">86</p> <p>1 only keep records up to twenty years," you mean</p> <p>2 Mr. Latti's daughter replied?</p> <p>3 A. Right.</p> <p>4 Q. When you contacted or asked your wife to</p> <p>5 contact Mr. Latti in 2003 after the checks</p> <p>6 stopped, how did you find a number to call him at?</p> <p>7 A. Um, it was on one of the papers I think,</p> <p>8 I'm pretty sure it was on one of the papers.</p> <p>9 Q. One of the papers?</p> <p>10 A. That I, I don't know if it was on this</p> <p>11 (indicating) document -- no, it wasn't on that. I</p> <p>12 know we had the number somewhere because we always</p> <p>13 kept it around because, you know, in case</p> <p>14 something did come up where we did need him again</p> <p>15 or something like that.</p> <p>16 I know it was on a paper, it was on no</p> <p>17 specific document or something like that but on a</p> <p>18 paper that I had.</p> <p>19 Q. And was this a paper that you got way</p> <p>20 back in 1983 or before?</p> <p>21 A. I think it was in '83 I think, yeah.</p> <p>22 Q. So, you, in an effort to get in touch</p> <p>23 with your attorney in 2003, called that number</p> <p>24 that you had, and the phone was answered by a</p>	<p style="text-align: right;">89</p> <p>1 wife's writing if you saw it?</p> <p>2 A. Not right offhand, no, but I know some of</p> <p>3 it, and the letters in there, I know she don't</p> <p>4 write like that.</p> <p>5 Q. Okay, and referring to the third page of</p> <p>6 Exhibit 15, there's some handwriting next to the</p> <p>7 numbers on the bottom, do you see where that</p> <p>8 handwriting is?</p> <p>9 A. The numbers that's been wrote out?</p> <p>10 Q. Yes.</p> <p>11 A. Yeah.</p> <p>12 Q. Do you know who wrote those out?</p> <p>13 A. No.</p> <p>14 Q. Okay. Where did you get this document?</p> <p>15 A. From Latti, from Mr. Latti.</p> <p>16 Q. Okay. When you got this document, is</p> <p>17 this the actual document you got from Mr. Latti or</p> <p>18 is it a copy of that document?</p> <p>19 A. It's a copy.</p> <p>20 Q. How was the document you got from</p> <p>21 Mr. Latti different than this?</p> <p>22 A. There wasn't any difference.</p> <p>23 Q. It had all the same writings?</p> <p>24 A. All except for this stamp (indicating),</p>
<p style="text-align: right;">87</p> <p>1 person you believed to be Mr. Latti's daughter?</p> <p>2 MR. DeWICK: Objection. You can</p> <p>3 answer.</p> <p>4 BY MR. LeBLANC:</p> <p>5 A. No, I think it was answered by a</p> <p>6 secretary, I'm not sure. Like I said, my wife</p> <p>7 handled that part of it because she had to ask for</p> <p>8 her, you know, the party that remembered the case</p> <p>9 or something like that, and she was the only one</p> <p>10 as far as I know that remembered the case.</p> <p>11 Q. Okay. Did Mr. Latti's daughter ever</p> <p>12 communicate to you that the firm that she worked</p> <p>13 for or owned wasn't the same as Latti Associates?</p> <p>14 A. Like I said, I don't know what went on as</p> <p>15 far as that was, you know. I hadn't had any</p> <p>16 contact with him in quite a long time, so, I</p> <p>17 didn't even know that he had retired himself, you</p> <p>18 know, so, I'm not familiar on what went on on her</p> <p>19 aspect up there, you know.</p> <p>20 Q. Okay, but did she ever tell you "We're</p> <p>21 not the same firm," "This isn't our problem," or</p> <p>22 anything like that?</p> <p>23 A. The only thing she said to me or my wife</p> <p>24 I should say, you know, is she wouldn't be able to</p>	<p style="text-align: right;">90</p> <p>1 I'm not sure what that stamp was there for, so,</p> <p>2 that stamp wasn't there and the writing up in the</p> <p>3 corner there, you know, Carolyn Latti, that wasn't</p> <p>4 there. It was just basic numbers and what it said</p> <p>5 on the form itself.</p> <p>6 Q. Were these numbers written in the lower</p> <p>7 right-hand corner?</p> <p>8 A. Yeah, those were there, yeah.</p> <p>9 Q. Okay.</p> <p>10 MS. McQUAY: For the record, could</p> <p>11 you identify the stamp that he's referring to on</p> <p>12 the document?</p> <p>13 MR. LeBLANC: Yes, for the record,</p> <p>14 I'll identify the stamp that is mostly illegible,</p> <p>15 I believe it says it may be a certification as to</p> <p>16 the correctness of the copy with it signed and</p> <p>17 then what looks like the letter D.</p> <p>18 MS. McQUAY: And for the record, that</p> <p>19 is the stamp that he testified was not there when</p> <p>20 he got the document?</p> <p>21 MR. LeBLANC: That's my</p> <p>22 understanding.</p> <p>23 THE WITNESS: Correct.</p> <p>24</p>
<p style="text-align: right;">88</p> <p>1 help us out on what we were looking for, you know,</p> <p>2 because she didn't have any records of the case</p> <p>3 itself.</p> <p>4 Q. Okay.</p> <p>5 A. Or she did make one remark that it was</p> <p>6 her father's case then, and that was the only</p> <p>7 remark that she made.</p> <p>8 Q. Mr. Dimon, I'd like you to look at each</p> <p>9 of the last three pages of Exhibit 15, each one of</p> <p>10 them has a notation and I'll read it to you, it's</p> <p>11 "ATT Carolyn Latti."</p> <p>12 Do you see where each one of those</p> <p>13 documents has that notation on there?</p> <p>14 A. Yeah.</p> <p>15 Q. Do you know who made that notation?</p> <p>16 A. No.</p> <p>17 Q. You don't know who wrote that down?</p> <p>18 A. No.</p> <p>19 Q. Was it you?</p> <p>20 A. No.</p> <p>21 Q. Does that look like your wife's writing</p> <p>22 at all?</p> <p>23 A. No.</p> <p>24 Q. Would you be able to recognize your</p>	<p style="text-align: right;">91</p> <p>1 BY MR. LeBLANC:</p> <p>2 Q. Is that your signature, the D?</p> <p>3 A. No.</p> <p>4 Q. Do you know whose signature it is, or?</p> <p>5 A. No.</p> <p>6 Q. Okay, and the third page of this document</p> <p>7 dated 6/12/03, I'm sorry, the fourth page of</p> <p>8 Exhibit 15, it says Dennis J. Dimon, Katherine I.</p> <p>9 Dimon, 151 Holly Ridge Road, P.O. Box 56, West</p> <p>10 Kingston, Rhode Island 02892.</p> <p>11 In June of 2003, was that your correct</p> <p>12 physical and mailing address?</p> <p>13 A. No, not in 2003, no. Oh, 2003, yes, I'm</p> <p>14 sorry, yes.</p> <p>15 Q. Okay, and on the bottom of this letter,</p> <p>16 it says "Thank you, Dennis Dimon, Katherine Irene</p> <p>17 Dimon."</p> <p>18 A. Right.</p> <p>19 Q. Those are two signatures?</p> <p>20 A. Right.</p> <p>21 Q. Is that (indicating) your signature?</p> <p>22 A. Yeah.</p> <p>23 Q. And does that (indicating) appear to be</p> <p>24 your wife's signature?</p>

<p style="text-align: right;">92</p> <p>1 A. Yeah.</p> <p>2 Q. Okay. Do you know who wrote the body of</p> <p>3 this letter, this portion here (indicating) in the</p> <p>4 middle?</p> <p>5 A. Um, I think Fred Benson did, I'm not</p> <p>6 sure.</p> <p>7 Q. Okay, and other than your signature which</p> <p>8 you put on this document and your wife's signature</p> <p>9 which she put on the document, is it your</p> <p>10 understanding or belief that all of the rest of</p> <p>11 this writing may have been Fred Benson's?</p> <p>12 A. I think so, I think so.</p> <p>13 Q. Okay. Now, if Mr. Benson wrote this or</p> <p>14 any other party wrote this, would you have had</p> <p>15 someone read it to you before you signed it?</p> <p>16 A. I don't remember it right offhand.</p> <p>17 Q. Do you recall signing a lined piece of</p> <p>18 paper with nothing on it?</p> <p>19 A. No.</p> <p>20 Q. So, do you dispute that this document is</p> <p>21 a document that you signed?</p> <p>22 A. I'm just saying I don't remember it right</p> <p>23 offhand, let's put it that way.</p> <p>24 Q. Okay, and I'll read it to you with</p>	<p style="text-align: right;">95</p> <p>1 sure.</p> <p>2 Q. Okay. So --</p> <p>3 A. I know we sent a letter to somebody at</p> <p>4 one time, I can't remember exactly who. It's been</p> <p>5 a little while and so much has been going on, you</p> <p>6 know, but I know he writ to somebody, let's put it</p> <p>7 that way.</p> <p>8 Q. And he is Mr. Benson?</p> <p>9 A. Right, Mr. Benson, right.</p> <p>10 Q. And did he do that on your behalf?</p> <p>11 A. Right.</p> <p>12 MR. LeBLANC: We'll take a half-hour</p> <p>13 then.</p> <p>14 (A lunch break was taken.)</p> <p>15 MR. LeBLANC: We'll go back on</p> <p>16 record. Just to confirm, Mr. O'Driscoll, do we</p> <p>17 still have you down there?</p> <p>18 MR. O'DRISCOLL: Yes.</p> <p>19 MR. LeBLANC: Okay.</p> <p>20 BY MR. LeBLANC:</p> <p>21 Q. Mr. Dimon, we're back on record, and I</p> <p>22 would like to show you Exhibit No. 11.</p> <p>23 MR. LeBLANC: I'd like that marked as</p> <p>24 11.</p>
<p style="text-align: right;">93</p> <p>1 respect, it says "Charter Security Life Insurance</p> <p>2 Company." Do you know who they are?</p> <p>3 A. Yeah.</p> <p>4 Q. Okay, and who are they?</p> <p>5 A. That was the first insurance company that</p> <p>6 had taken the policy.</p> <p>7 Q. And when you say the policy?</p> <p>8 A. Annuity or whatever you want to call it</p> <p>9 there.</p> <p>10 Q. Okay, and I'll read from the document,</p> <p>11 "We had the understand that my wife was to collect</p> <p>12 this check up to twenty year. If nothing happened</p> <p>13 to me and I was to collect it for fifty years."</p> <p>14 MS. McQUAY: I think you misread it</p> <p>15 actually, I think it says "If anything happened to</p> <p>16 me."</p> <p>17 MR. LeBLANC: "If anything," I'm</p> <p>18 sorry, then I'll correct that.</p> <p>19 BY MR. LeBLANC:</p> <p>20 Q. "If anything happened to me and I was to</p> <p>21 collect it for fifty years." Does that ring a</p> <p>22 bell to you?</p> <p>23 A. Not really.</p> <p>24 Q. Was it your understanding in 2003 that</p>	<p style="text-align: right;">96</p> <p>1 (Exhibit No. 11, Letter dated</p> <p>2 9/24/99, marked for identification.)</p> <p>3 MR. LeBLANC: And for the record,</p> <p>4 we've marked as Exhibit 11 a letter dated</p> <p>5 September 24th, 1999 addressed to Dennis Dimon by</p> <p>6 Teresa Thorp.</p> <p>7 BY MR. LeBLANC:</p> <p>8 Q. Mr. Dimon, have you ever seen this</p> <p>9 document before?</p> <p>10 A. No, I don't even know what it is.</p> <p>11 Q. Okay. I'll read the first paragraph, it</p> <p>12 says "We received a call from Katherine Dimon</p> <p>13 requesting information on the above contract.</p> <p>14 This contract was issued as a structured</p> <p>15 settlement on 5/5/1983."</p> <p>16 Do you know what contract they're</p> <p>17 referring to?</p> <p>18 A. No, not right offhand.</p> <p>19 Q. Okay. Was your settlement annuity that</p> <p>20 you received issued on 5/5/1983?</p> <p>21 A. It could have been, like I said, I'm not</p> <p>22 too good with dates and stuff like that.</p> <p>23 Q. Okay, and I'll skip down a sentence, "You</p> <p>24 received monthly payments," the copy is kind of</p>
<p style="text-align: right;">94</p> <p>1 your wife was to collect the check for twenty</p> <p>2 years?</p> <p>3 A. Yeah.</p> <p>4 Q. And that if --</p> <p>5 A. Okay, yeah.</p> <p>6 Q. And if nothing happened to you --</p> <p>7 A. Right, right.</p> <p>8 Q. -- how long were you supposed to collect</p> <p>9 the check?</p> <p>10 A. Well, all right, now I know where the</p> <p>11 letter came from, if I can remember now, that is</p> <p>12 what they had given me a life expectancy to the</p> <p>13 age of fifty.</p> <p>14 The way they had based that on the way I</p> <p>15 was, you know, the business I was in and down</p> <p>16 through the families on the male side of my</p> <p>17 family, that they never really lived over the age</p> <p>18 of fifty, that and I was a heavy smoker and stuff</p> <p>19 like that at that time, that the doctors had gave</p> <p>20 me a life expectancy of fifty years because of my</p> <p>21 livelihood and stuff like that, and I remember</p> <p>22 saying that to somebody.</p> <p>23 I think it was Fred Benson, I'm not sure,</p> <p>24 so, he might have wrote that in there, I'm not</p>	<p style="text-align: right;">97</p> <p>1 bad, "You," some word, "monthly payments until the</p> <p>2 final payment on 5/5/2003."</p> <p>3 Now, what does that mean to you, the</p> <p>4 final payment on 5/5/2003?</p> <p>5 A. Like I said, I thought it was a mistake.</p> <p>6 Q. Okay, but you admitted in your request</p> <p>7 for production or request for admissions that we</p> <p>8 sent you and you signed that you received this</p> <p>9 letter?</p> <p>10 A. Yeah, yeah, I think so.</p> <p>11 Q. Okay, and in September of 1999, P.O. Box</p> <p>12 56 was your mailing address?</p> <p>13 A. Yeah.</p> <p>14 Q. Okay. Was that where you were receiving</p> <p>15 your checks?</p> <p>16 A. Yeah.</p> <p>17 Q. Okay. So, would it be fair to say that</p> <p>18 you did receive this letter as you admitted?</p> <p>19 A. I'm, I think so. Like I said, there's so</p> <p>20 many papers, I don't remember all of them, let's</p> <p>21 put it that way.</p> <p>22 Q. Okay. Now, why did your wife, Kathy,</p> <p>23 request information regarding the annuity in 1999?</p> <p>24 A. Because I asked her to. The only other</p>

<p style="text-align: right;">98</p> <p>1 thing I could think of was for a loan, the house, 2 after we sold the other house, we had gotten a 3 loan for the house that we're living in now, and 4 we used that, you know, as income purposes as far 5 as getting a loan. 6 Q. Okay. 7 A. That was the only other reason that I 8 could think of that she would be getting ahold of 9 them. 10 Q. When you say we used that, do you mean 11 you used your monthly annuity payments as income? 12 A. Right. 13 Q. For purposes of getting a mortgage on a 14 home? 15 A. Right. 16 Q. Okay. Did you ever try to sell or assign 17 your annuity to anyone? 18 A. No. 19 Q. Do you know what I mean when I say sell 20 or assign your annuity? 21 A. Right, I know. 22 Q. Like, lump sum? 23 A. Right. 24 Q. Have you ever known anyone who won a big</p>	<p style="text-align: right;">101</p> <p>1 to be in May of 2003, what did you do with that 2 information? 3 A. Like I said before, I thought it was a 4 mistake, and I said they didn't know, I told my 5 wife they don't know what they're talking about, 6 you know. It wasn't no signed document, you know, 7 nothing was ever said, so, I just blew it off. 8 Q. Okay. 9 MR. LeBLANC: Can you mark this as 10 Exhibit 12, please. 11 (Exhibit No. 12, Telephone Log, 12 marked for identification.) 13 BY MR. LeBLANC: 14 Q. Mr. Dimon, I'm going to show you what's 15 been marked as Exhibit 12. Have you ever seen 16 this document before? 17 A. No. 18 Q. Okay. I'm going to read from the 19 document where it says "From Tulsa Teleservices" 20 and the subject is "Call to 1-800-Met-5000 annuity 21 payouts." 22 The date on the document is 06/05/03, the 23 insured name is Dennis Dimon, and the caller name 24 is Katherine Dimon.</p>
<p style="text-align: right;">99</p> <p>1 prize in the lottery? 2 A. No. 3 Q. Okay, that's where a lot of people know 4 that from. So, and right around the September 5 1999 period, you were trying to apply for a loan 6 for a home or a mortgage? 7 A. Right, right. 8 Q. So, you called MetLife and asked for a 9 copy of the contract? 10 A. Right. 11 Q. Okay, and they sent you, or actually, 12 what the letter says is you requested information 13 on the contract; is that right? 14 A. It was either that or the bank, one or 15 the other. I wanted, you know, the bank wanted 16 confirmation too on the, on what we were getting 17 per month and stuff like that, so, it could have 18 been through the bank wanted the information, not 19 myself personally. 20 Q. Okay, and what bank was that? 21 A. Citizens Bank. 22 Q. And they were the bank that you were 23 applying for a mortgage with? 24 A. Right, right. They had my first mortgage</p>	<p style="text-align: right;">102</p> <p>1 A. Hmm mmm. 2 Q. Do you know if your wife called MetLife 3 in June of 2003? 4 A. I can't be sure, you'd have to ask her. 5 Q. Okay, and I believe your prior testimony 6 was that you would receive your check around the 7 5th of every month? 8 A. Roughly around there, yes. 9 Q. And there was some documentation showing 10 you received a check in May of 2003? 11 A. I think so, I think there was one, yeah. 12 Q. Okay. So, this June 5th, 2003 would have 13 been the next date you would have received a 14 check? 15 A. Probably. 16 Q. Okay, and back in 1991 when you had the 17 mailing issue when you separated from your wife 18 and you changed addresses, you didn't receive a 19 check for that, you missed one of those checks, 20 right, it was sent back? 21 A. Right, right. 22 Q. And in response to missing that check, 23 you called MetLife? 24 A. Right, I had to call them personally</p>
<p style="text-align: right;">100</p> <p>1 on my first house. 2 Q. Are you still paying off that mortgage? 3 A. Oh, yeah. 4 Q. And how long do you have left? 5 A. I don't know. I had to refinance, so, I 6 can't remember exactly. I think we went for a 7 thirty-year I think. 8 Q. And what did you do with this letter when 9 you received it? 10 A. This letter here, I'm not sure. My wife, 11 like I say, my wife takes care of a lot of the 12 paperwork and stuff like that. 13 She puts it in a file, or you know, if 14 it's a paper that the bank needed to see, then we, 15 you know, gave it to the bank for them, you know, 16 for them to go through. 17 Q. And do you know for a fact whether or not 18 this was given to the bank in support of your 19 application for a mortgage? 20 A. Not right offhand, no. 21 Q. Do you know anyone who would know that? 22 A. My wife would be the only one. 23 Q. So, when you learned in September of 1999 24 that the final payment on your annuity was going</p>	<p style="text-align: right;">103</p> <p>1 myself, yeah. 2 Q. And why did you have to call them 3 personally yourself? 4 A. Because my wife wasn't able to do 5 anything with it because they needed my approval. 6 Q. Okay. So, prior to 1999 when you 7 received a letter for the bank mortgage, before 8 that did anyone ever tell you that there was a 9 dispute about how long you were supposed to 10 receive annuity payments? 11 A. No. 12 Q. Did anyone ever contact you saying that 13 you may not receive all the payments that you 14 think you might be entitled to? 15 A. No. 16 Q. Okay. 17 MR. LeBLANC: Can you mark that as 18 Exhibit 17, please. 19 (Exhibit No. 17, Letter dated 20 9/13/04, marked for identification.) 21 MR. LeBLANC: For the record, I have 22 asked that Exhibit 17 be marked, it's a letter 23 dated September 13th, 2004 from the Kaplan/Bond 24 Group to Metropolitan Life Insurance Company.</p>

<p style="text-align: right;">104</p> <p>1 BY MR. LeBLANC:</p> <p>2 Q. Mr. Dimon, can you look at this document</p> <p>3 and tell me if you recognize it?</p> <p>4 A. I've seen it, but I've probably seen it,</p> <p>5 yeah. Like I said, I can't recognize every one of</p> <p>6 them.</p> <p>7 Q. Okay, and I'll read to you here on the</p> <p>8 bottom, it says "cc: Dennis Dimon, Frederick W.</p> <p>9 Benson."</p> <p>10 A. Yeah.</p> <p>11 Q. Do you understand when it says cc, it</p> <p>12 stands for either client copy or carbon copy, that</p> <p>13 that indicates that that letter was sent to you?</p> <p>14 A. I do now.</p> <p>15 Q. Okay, and have you received other letters</p> <p>16 from your attorney from the Kaplan/Bond Group?</p> <p>17 A. No, not that I know of, maybe a few</p> <p>18 others, but.</p> <p>19 MR. LeBLANC: Can you mark that as</p> <p>20 Exhibit 18, please.</p> <p>21 (Exhibit No. 18, Letter dated</p> <p>22 9/28/04, marked for identification.)</p> <p>23 MR. LeBLANC: For the record, I've</p> <p>24 asked that Exhibit 18 be marked, it's a letter</p>	<p style="text-align: right;">107</p> <p>1 saying I'm going to represent you and here are the</p> <p>2 terms?</p> <p>3 A. Um, only when I was in the hospital, and</p> <p>4 that was back when my mother first got ahold of</p> <p>5 him.</p> <p>6 Q. Okay. After that initial letter when you</p> <p>7 were in the hospital, did he ever send you any</p> <p>8 other letters?</p> <p>9 A. No, actually, he didn't send me a letter</p> <p>10 in the hospital, he sent a representative over to</p> <p>11 the hospital and notified me that I'm going to be</p> <p>12 your lawyer and all this other stuff, and when I</p> <p>13 was in the hospital, you know, I didn't know what</p> <p>14 was going on exactly, and you know, he told me</p> <p>15 that my mother had gotten ahold of me, sorry,</p> <p>16 gotten ahold of him and said that it was all right</p> <p>17 for me to sign papers from this guy's office, you</p> <p>18 know, and I said okay, you know.</p> <p>19 So, everything that was being done while</p> <p>20 I was in the hospital, I had no recollections of</p> <p>21 outside of it, you know, so, I didn't know exactly</p> <p>22 what was going on.</p> <p>23 Q. Okay, and when you say I didn't know</p> <p>24 exactly what was going on, what do you mean by</p>
<p style="text-align: right;">105</p> <p>1 dated September 28th, 2004 from the Kaplan/Bond</p> <p>2 Group to Metropolitan Life Insurance Company, and</p> <p>3 it has an enclosed letter dated September 13th,</p> <p>4 2004 from the Kaplan/Bond Group to the</p> <p>5 Metropolitan Life Insurance Company.</p> <p>6 BY MR. LeBLANC:</p> <p>7 Q. On this Exhibit 18, do you see that this</p> <p>8 letter was also cc'd to you and Mr. Benson?</p> <p>9 A. Hmm mmm.</p> <p>10 Q. Okay, and do you recall ever seeing this</p> <p>11 letter?</p> <p>12 A. I might have, yeah.</p> <p>13 Q. Do you have any reason to believe you</p> <p>14 didn't receive this letter?</p> <p>15 A. No.</p> <p>16 Q. What's your understanding of being a</p> <p>17 person whose represented by an attorney?</p> <p>18 A. What's my reason, say that again?</p> <p>19 Q. What does it mean to you to be</p> <p>20 represented by an attorney?</p> <p>21 A. That, that you put your trust into his</p> <p>22 hands to do the right thing for you.</p> <p>23 Q. And does it also involve him advising you</p> <p>24 about what the right thing might be?</p>	<p style="text-align: right;">108</p> <p>1 that, how do you mean that?</p> <p>2 A. Well, I, I didn't know that, you know,</p> <p>3 that any of the lawsuits and stuff like that were</p> <p>4 being brought up right then and there, you know,</p> <p>5 while I was still in the hospital, you know,</p> <p>6 because nobody had told me anything, you know, and</p> <p>7 like I said before, the next thing I know, there</p> <p>8 was a guy in the office saying "Oh, I represent</p> <p>9 Latti & Associates and your mother said that it</p> <p>10 was okay" and all this other stuff, so, you know,</p> <p>11 sign the documents for a lawsuit, you know, and I</p> <p>12 just thought it was, you know, just regular, you</p> <p>13 know, because nine times out of ten in an accident</p> <p>14 like that, there's a lawsuit brought up against,</p> <p>15 you know, the people, you know, so.</p> <p>16 Q. Okay, and this was right after the</p> <p>17 accident, right after you got hurt?</p> <p>18 A. Basically.</p> <p>19 Q. Because you were still in the hospital?</p> <p>20 A. Oh, yeah.</p> <p>21 Q. And even then, the representative from</p> <p>22 Latti & Associates told you that you could sign</p> <p>23 the papers because your mother said it was okay?</p> <p>24 A. Yeah.</p>
<p style="text-align: right;">106</p> <p>1 A. Oh, yeah, definitely.</p> <p>2 Q. And advising you about things that may</p> <p>3 happen in your case?</p> <p>4 A. Yeah.</p> <p>5 Q. And do you think that Mr. Kaplan was</p> <p>6 trying to do that when he copied you with these</p> <p>7 letters?</p> <p>8 MR. KEANE: Objection. Go ahead, you</p> <p>9 can answer.</p> <p>10 BY MR. LeBLANC:</p> <p>11 A. I think so, yeah.</p> <p>12 Q. So, you think that by getting copies of</p> <p>13 the letters, that Mr. Kaplan was trying to keep</p> <p>14 you informed about what was going on in your case?</p> <p>15 A. Right.</p> <p>16 MR. KEANE: Objection.</p> <p>17 BY MR. LeBLANC:</p> <p>18 Q. Did you ever receive letters from</p> <p>19 Mr. Latti's office either directly addressed to</p> <p>20 you or carbon copied that were addressed to</p> <p>21 somebody else?</p> <p>22 A. No, never received anything from him</p> <p>23 really.</p> <p>24 Q. Okay. Did he ever send you a letter</p>	<p style="text-align: right;">109</p> <p>1 Q. And you were in your early twenties at</p> <p>2 that point; is that right?</p> <p>3 A. Right, right.</p> <p>4 Q. If he had presented papers to you that</p> <p>5 your mother didn't approve, would you have signed</p> <p>6 them?</p> <p>7 A. No.</p> <p>8 Q. And why not?</p> <p>9 A. Because I didn't know him from Adam from</p> <p>10 Eve, you know. I never worked that way the whole</p> <p>11 time I was growing up.</p> <p>12 My mother always told me, you know, never</p> <p>13 sign anything you're not sure of or a person you</p> <p>14 don't know or anything else like that, and that's</p> <p>15 why I always stuck by it, you know.</p> <p>16 Q. Okay, and when this representative came</p> <p>17 to the hospital to present the documents to you,</p> <p>18 did he read those documents to you or did he just</p> <p>19 give them to you to sign?</p> <p>20 A. To tell you the truth, I can't really</p> <p>21 remember. I mean there was quite a few of them,</p> <p>22 and he says it's to give me power of attorney to</p> <p>23 proceed with the case and stuff like that, which I</p> <p>24 understood that point, you know. As far as</p>

<p style="text-align: right;">110</p> <p>1 reading them all, I'm not sure. 2 Q. Okay, and did anyone read those documents 3 to you? 4 A. Not that I can recollect. 5 Q. Okay, but the representative did say your 6 mother said it was okay to sign? 7 A. Right. 8 Q. And the representative from Latti & 9 Associates who came to the hospital, that wasn't 10 Mr. Latti himself? 11 A. Um, no, not, not that I know of. I can't 12 even remember his name. 13 Q. Okay. 14 A. They had me on so many painkillers, I 15 didn't know if I was coming or going. 16 MR. LeBLANC: Can you mark that as 17 Exhibit 2, please. 18 (Exhibit No. 2, Annuity Application, 19 marked for identification.) 20 MR. LeBLANC: For the record, I've 21 asked that Exhibit 2 be marked, it's entitled 22 "Annuity Application, Charter Security Life 23 Insurance Company, New York." 24</p>	<p style="text-align: right;">113</p> <p>1 BY MR. LeBLANC: 2 Q. I'll show you what was marked as Exhibit 3 5 and ask if you recognize that document? 4 A. No, not at all. 5 Q. Do you know if anyone's ever read this 6 document to you? 7 A. Not to my knowledge. 8 Q. Okay. On the second page of the document 9 in the cc section, it says Mr. Roger Hughes, Latti 10 Associates, Attorneys, 30-31 Union Wharf, Boston, 11 Mass. 02109. 12 Do you see that? 13 A. Hmm mmm. 14 Q. Who do you understand Mr. Hughes to be? 15 A. That was the lawyer representing me 16 at -- Mr. Hughes? 17 Q. Roger Hughes. 18 A. Roger, yeah, he was the lawyer 19 representing me for my court case. 20 Q. Okay, and you understood that Mr. Hughes 21 worked with Mr. Latti? 22 A. Right. 23 Q. And he worked at Latti Associates? 24 A. Right.</p>
<p style="text-align: right;">111</p> <p>1 BY MR. LeBLANC: 2 Q. Mr. Dimon, can you look at that document 3 and tell me if you recognize it? 4 A. I recognize it, yeah, somewhat. 5 Q. Okay, and where do you recognize it from? 6 A. Mr. Latti's office. 7 Q. And what happened with this document in 8 Mr. Latti's office, if anything? 9 A. I'm not sure. 10 Q. Okay. Do you see here on the bottom 11 where it says "Signature of annuitant," is that 12 your signature? 13 A. Yeah. 14 Q. Okay. Was this document completed when 15 you filled it out; do you recall? 16 A. I'm not sure. 17 Q. So, who was present when you signed that, 18 if you recall? 19 A. I'm not sure of that either. 20 Q. Okay. Do you remember if you were 21 sitting in an office alone signing documents? 22 A. I was never alone, my wife was most 23 generally with me or my mother or my mother and my 24 wife.</p>	<p style="text-align: right;">114</p> <p>1 Q. Okay, and do you see this was dated 2 August 12th, 1983? 3 A. Yeah. 4 Q. Okay. Between May of 1983 and August of 5 1983, had you received any documents from 6 Mr. Latti's office at all? 7 A. Not that I can recollect, no. 8 Q. Any letters? 9 A. Not that I can recollect, no. 10 Q. Okay. Did he at any time tell you that 11 he's no longer your attorney? 12 A. No. 13 Q. Okay. Did you ever see or sign a 14 document entitled "Motion to withdraw"? 15 A. No. 16 Q. By August 12th, 1983, was Mr. Latti and 17 Latti Associates still your attorney? 18 MR. DeWICK: Objection. 19 BY MR. LeBLANC: 20 A. As far as I know. 21 Q. And do you think it was their 22 responsibility to inform you regarding changes to 23 your case or your settlement? 24 A. Most definitely.</p>
<p style="text-align: right;">112</p> <p>1 Q. And when you were in the Latti 2 Associates' offices, were you with a 3 representative of Latti Associates? 4 A. When I was in his office, I was mostly 5 with him or an associate of his, yeah. 6 Q. Okay. 7 MR. LeBLANC: Can you mark that as 5, 8 please. 9 (Exhibit No. 5, Letter dated 8/12/83, 10 marked for identification.) 11 MR. LeBLANC: For the record, I've 12 asked that a letter dated August 12th, 1983 from 13 John Noe of American Motorists Insurance Company 14 to Robert Foley of Dean Witter Reynolds be marked. 15 It's a two-page letter. 16 BY MR. LeBLANC: 17 Q. Mr. Dimon -- 18 MS. McQUAY: I'm sorry, what exhibit 19 number? 20 MR. LeBLANC: No. 5. 21 MS. McQUAY: Thank you. 22 MR. LeBLANC: And just for everyone's 23 sake, I'm using the exhibits that were 24 prepared, I may not use them all.</p>	<p style="text-align: right;">115</p> <p>1 MR. DeWICK: Objection. You can 2 answer, I'm sorry. 3 BY MR. LeBLANC: 4 A. Yeah, most definitely. 5 Q. And did Mr. Hughes or Mr. Latti call you 6 and tell you there was a dispute about your policy 7 or your annuity at that point? 8 A. No. 9 Q. Okay. 10 MR. LeBLANC: Can you mark that as 11 Exhibit 6, please. 12 (Exhibit No. 6, Letter dated 9/26/83, 13 marked for identification.) 14 MR. LeBLANC: For the record, I've 15 asked that Exhibit 6 be marked, a letter dated 16 September 26th, 1983 from Charter Security 17 Insurance Company, New York to Mr. John Noe, 18 American Motorists Insurance Company. 19 BY MR. LeBLANC: 20 Q. Mr. Dimon, can you take a look at that 21 document? 22 A. I can, but it won't mean nothing to me. 23 Q. Do you recognize it? 24 A. No.</p>

<p style="text-align: right;">116</p> <p>1 Q. Have you ever seen it before?</p> <p>2 A. No.</p> <p>3 Q. Okay, and if you look at the second page,</p> <p>4 do you see here on the bottom under the cc</p> <p>5 section, it says Mr. Roger Hughes, Latti</p> <p>6 Associates, Attorneys?</p> <p>7 A. Yeah.</p> <p>8 Q. And it gives an address?</p> <p>9 A. Uh-huh.</p> <p>10 Q. Did you ever receive a copy of this</p> <p>11 letter from Mr. Hughes or Latti & Associates?</p> <p>12 A. Not that I can recollect.</p> <p>13 Q. Did either Mr. Hughes or Latti &</p> <p>14 Associates ever call you and tell you there was a</p> <p>15 question between the insurance companies about</p> <p>16 what contract you had purchased or they had</p> <p>17 purchased on your behalf?</p> <p>18 A. No.</p> <p>19 Q. Okay. If you had known in 1983 that</p> <p>20 there was a dispute about how much payment you</p> <p>21 would have gotten, what would you have done?</p> <p>22 A. I'm not sure to tell you the truth, you</p> <p>23 know. What can you do, take it back to court or</p> <p>24 whatever, I don't know, you know.</p>	<p style="text-align: right;">119</p> <p>1 The second document is Exhibit 9, a</p> <p>2 letter dated October 12th, 1983 to Charter</p> <p>3 Security Life Insurance Company, New York from</p> <p>4 John Noe, American Motorists Insurance Company.</p> <p>5 BY MR. LeBLANC:</p> <p>6 Q. Mr. Dimon, I'd like you to look at both</p> <p>7 of these documents, Exhibit 7 and Exhibit 9. Have</p> <p>8 you ever seen either one of these documents?</p> <p>9 A. No.</p> <p>10 Q. Do you recognize either one of these</p> <p>11 documents?</p> <p>12 A. No.</p> <p>13 Q. Do you see in each of these documents in</p> <p>14 the cc section that they're both cc'd to Mr. Roger</p> <p>15 Hughes, Latti Associates, Attorneys?</p> <p>16 A. Hmm mmm.</p> <p>17 Q. And it gives their address on Union</p> <p>18 Wharf?</p> <p>19 A. Yeah.</p> <p>20 Q. In 1983, do you recall whether or not</p> <p>21 Latti Associates was on Union Wharf?</p> <p>22 A. I remember going to the office one time,</p> <p>23 and it was right on the waterfront.</p> <p>24 Q. Okay, and you have never seen either of</p>
<p style="text-align: right;">117</p> <p>1 Q. Would you have called your attorney in</p> <p>2 1983?</p> <p>3 A. Oh, yeah, most definitely, most</p> <p>4 definitely.</p> <p>5 Q. And what would your instructions be to</p> <p>6 your attorney in 1983?</p> <p>7 A. First, I'd ask him why the discrepancy if</p> <p>8 it's already been going through court.</p> <p>9 Q. And then would you tell him to fix it?</p> <p>10 A. Of course.</p> <p>11 Q. Would you expect that it would be his</p> <p>12 responsibility, his job to fix it for you?</p> <p>13 A. Oh, yeah, most definitely.</p> <p>14 Q. Okay. Do you feel that you were done a</p> <p>15 disservice by Latti & Associates by their not</p> <p>16 informing you of this dispute?</p> <p>17 MR. DeWICK: Objection.</p> <p>18 BY MR. LeBLANC:</p> <p>19 A. Yeah, yeah, they should have informed me.</p> <p>20 Q. Among all the parties to this case, and</p> <p>21 we addressed who they were earlier, among the</p> <p>22 parties to this case, with whom did you have</p> <p>23 contact in 1983?</p> <p>24 A. Latti's mostly.</p>	<p style="text-align: right;">120</p> <p>1 these documents --</p> <p>2 A. No.</p> <p>3 Q. -- to your recollection?</p> <p>4 A. Right.</p> <p>5 Q. Okay. Did Mr. Hughes, Mr. Latti, or any</p> <p>6 representative of Latti Associates ever call you</p> <p>7 or write to you in 1983 regarding a dispute as to</p> <p>8 the terms of your annuity?</p> <p>9 A. No.</p> <p>10 MR. LeBLANC: Can you mark this as</p> <p>11 Exhibit 20, please.</p> <p>12 (Exhibit No. 20, Note dated 11/16/04,</p> <p>13 marked for identification.)</p> <p>14 MR. LeBLANC: For the record, I'm</p> <p>15 going to, I've asked that Exhibit 20 be marked,</p> <p>16 it's a note dated November 16th, 2004 addressed to</p> <p>17 whom it may concern signed by Dennis Dimon and two</p> <p>18 other individuals.</p> <p>19 BY MR. LeBLANC:</p> <p>20 Q. Mr. Dimon, can you look at that document</p> <p>21 and tell me if you recognize it?</p> <p>22 A. I'm not sure to tell you the truth.</p> <p>23 Q. Okay, but is this (indicating) your</p> <p>24 signature next to the title name?</p>
<p style="text-align: right;">118</p> <p>1 Q. Okay. Did you ever call Charter Security</p> <p>2 Life Insurance Company of New York in 1983?</p> <p>3 A. Not that I can remember.</p> <p>4 Q. Okay, American Motorists Life Insurance</p> <p>5 Company in 1983?</p> <p>6 A. Not that I can remember.</p> <p>7 Q. Dean Witter Reynolds in 1983?</p> <p>8 A. I never even heard of them.</p> <p>9 Q. Okay. So, among all the defendants, you</p> <p>10 only had contact with Latti in 1983?</p> <p>11 A. Right.</p> <p>12 Q. Okay.</p> <p>13 MR. LeBLANC: I'd like these marked</p> <p>14 as 7 and 9.</p> <p>15 (Exhibit No. 7, Letter dated</p> <p>16 10/10/83, marked for identification.)</p> <p>17 (Exhibit No. 9, Letter dated</p> <p>18 10/12/83, marked for identification.)</p> <p>19 MR. LeBLANC: For the record, I've</p> <p>20 asked that two exhibits be marked, one Exhibit 7</p> <p>21 is a letter dated October 10th, 1983 addressed to</p> <p>22 Charter Security Life Insurance Company, New York</p> <p>23 from John Noe, home office claims from American</p> <p>24 Motorists Insurance Company.</p>	<p style="text-align: right;">121</p> <p>1 A. Yeah, yeah.</p> <p>2 Q. And I'll read it to you, it says "I,</p> <p>3 Dennis J. Dimon, hereby authorize" and let me make</p> <p>4 sure I'm getting this right, "Hereby authorize</p> <p>5 David B. Kaplan, Esq. to act for me in all matters</p> <p>6 relating to my structured settlement."</p> <p>7 Does that ring a bell for you?</p> <p>8 A. Yeah, now it does.</p> <p>9 Q. And what were you requesting by way of</p> <p>10 this letter?</p> <p>11 A. Finding out information on what had</p> <p>12 happened with the settlement, and you know,</p> <p>13 whether there was anything to be done about it.</p> <p>14 Q. And why did you draft this letter?</p> <p>15 A. You mean write it out?</p> <p>16 Q. Yes, was this your idea to write it out</p> <p>17 or someone else's?</p> <p>18 A. It was somebody else's I guess.</p> <p>19 Q. And whose idea was it to write it out?</p> <p>20 A. I think it was Fred's, I'm not sure.</p> <p>21 Q. And this handwriting, do you recognize</p> <p>22 whose handwriting this (indicating) is?</p> <p>23 A. It's not mine.</p> <p>24 Q. Okay. Is this (indicating) your wife's</p>

<p style="text-align: right;">122</p> <p>1 handwriting?</p> <p>2 A. Um, I'm not sure. Like I said, I'm not</p> <p>3 sure of the letter itself, but I remember the</p> <p>4 letter.</p> <p>5 Q. Okay. If I represent to you that this</p> <p>6 signature on the left-hand side of Exhibit 20 is</p> <p>7 Katherine Irene Dimon, would you dispute that?</p> <p>8 A. No.</p> <p>9 Q. Do you believe that to be your wife's</p> <p>10 signature?</p> <p>11 A. Yeah.</p> <p>12 Q. And it says "Witness" underneath, was she</p> <p>13 witnessing your signature?</p> <p>14 A. Basically, yeah.</p> <p>15 Q. Okay, and do you know who this second</p> <p>16 witness name is (indicating)?</p> <p>17 A. My father-in-law.</p> <p>18 Q. And what's his name?</p> <p>19 A. George Carr.</p> <p>20 Q. Is that C-A-R-R, do you know, two R's?</p> <p>21 A. Yeah.</p> <p>22 Q. And he lives on the now infamous Laura</p> <p>23 Lane?</p> <p>24 A. Yeah, he lives on Laura Lane.</p>	<p style="text-align: right;">125</p> <p>1 Q. Okay. Did they tell you they were</p> <p>2 drafting this document for you?</p> <p>3 A. Yes.</p> <p>4 Q. And that they were going to file it in</p> <p>5 court?</p> <p>6 A. Yes.</p> <p>7 Q. And since, without disclosing the</p> <p>8 conversations you've had, since this document was</p> <p>9 filed, have they contacted you to give you updates</p> <p>10 and statuses on your case?</p> <p>11 A. Yeah.</p> <p>12 Q. So, they let you know what's going on?</p> <p>13 A. Right.</p> <p>14 Q. Do you consider that to be part of their</p> <p>15 responsibilities as an attorney?</p> <p>16 A. Oh, yeah, most definitely.</p> <p>17 Q. And would that be a part of the</p> <p>18 responsibility of any attorney you hire?</p> <p>19 A. Oh, yeah, definitely.</p> <p>20 Q. Okay. When the court appointed the</p> <p>21 guardian on your behalf, did you dispute the</p> <p>22 appointment of the guardian?</p> <p>23 A. No.</p> <p>24 Q. Did you say "Hey, judge, I'm fine, I know</p>
<p style="text-align: right;">123</p> <p>1 Q. Is this 86 Laura Lane the house that you</p> <p>2 lived in with your wife for a period of time?</p> <p>3 A. It was right next to his.</p> <p>4 Q. Okay, and why was your father-in-law</p> <p>5 witnessing your signature?</p> <p>6 A. He happened to be there, and we just</p> <p>7 asked him if he wanted to witness it.</p> <p>8 Q. Okay. Did anyone suggest to you that you</p> <p>9 needed witnesses to your signature on this</p> <p>10 document?</p> <p>11 A. Not that I can remember.</p> <p>12 Q. In 1983, you're aware that there was a</p> <p>13 lawsuit filed on your behalf, is that true?</p> <p>14 A. Yeah.</p> <p>15 Q. Okay, and who filed that lawsuit for you?</p> <p>16 A. Latti & Associates.</p> <p>17 Q. Okay, and when they filed the lawsuit,</p> <p>18 did they, if you recall, file a document entitled</p> <p>19 complaint?</p> <p>20 A. I'm not sure on how it was filed to tell</p> <p>21 you the truth.</p> <p>22 Q. Okay. Did you ever receive copies of the</p> <p>23 pleadings that were filed in the Jenny C. case?</p> <p>24 A. I never received much of anything.</p>	<p style="text-align: right;">126</p> <p>1 what's going on"?</p> <p>2 A. No, not that I can recollect.</p> <p>3 Q. Did you, were you glad that the court</p> <p>4 appointed someone to look after your interest?</p> <p>5 A. Oh, yeah, most definitely.</p> <p>6 Q. Okay.</p> <p>7 MR. LeBLANC: Can you mark this as</p> <p>8 Exhibit 3, please.</p> <p>9 (Exhibit No. 3, Supplementary</p> <p>10 Agreement No. SC1126, marked for identification.)</p> <p>11 MR. LeBLANC: Mr. Dimon, first, for</p> <p>12 the record, I've asked that Exhibit 3 be marked,</p> <p>13 it's a document entitled "Supplementary Agreement</p> <p>14 No. SC1126."</p> <p>15 BY MR. LeBLANC:</p> <p>16 Q. Mr. Dimon, does this document, do you</p> <p>17 recognize this document?</p> <p>18 A. No.</p> <p>19 Q. Have you ever seen it before?</p> <p>20 A. No.</p> <p>21 Q. Do you know what this document is?</p> <p>22 A. No.</p> <p>23 Q. Okay. I represent to you this document</p> <p>24 sets out the terms of your annuity payments from</p>
<p style="text-align: right;">124</p> <p>1 Q. Okay. When you say you never received</p> <p>2 much of anything, is it your testimony you never</p> <p>3 received much of anything from Latti & Associates</p> <p>4 in terms of documents?</p> <p>5 A. Right.</p> <p>6 Q. Okay.</p> <p>7 MR. LeBLANC: Can you mark that as</p> <p>8 Exhibit 1, please.</p> <p>9 (Exhibit No. 1, Complaint, marked for</p> <p>10 identification.)</p> <p>11 MR. LeBLANC: For the record, I'd</p> <p>12 like to, I've asked that Exhibit 1 be marked and</p> <p>13 represent that it's the complaint filed in this</p> <p>14 matter and contains fourteen pages.</p> <p>15 MR. KEANE: In the present matter?</p> <p>16 MR. LeBLANC: In the <u>Dimon vs.</u></p> <p>17 <u>MetLife, et al.</u> matter.</p> <p>18 BY MR. LeBLANC:</p> <p>19 Q. Mr. Dimon, have you ever seen this</p> <p>20 document before?</p> <p>21 A. No.</p> <p>22 Q. Did you know such a document was drafted</p> <p>23 on your behalf?</p> <p>24 A. I know it through Kaplan's office, yeah.</p>	<p style="text-align: right;">127</p> <p>1 Charter Security Life's perspective.</p> <p>2 A. Uh-huh.</p> <p>3 Q. If your attorney received such a</p> <p>4 document, would you expect that they would</p> <p>5 communicate that to you?</p> <p>6 A. I'd hope so.</p> <p>7 Q. Okay, and why would you hope so?</p> <p>8 A. Because I'd want to know too.</p> <p>9 Q. Okay. Now, in terms of the Jenny C.</p> <p>10 litigation, did you consider yourself to be part</p> <p>11 of a team in the sense that everyone was working</p> <p>12 together for the same goal?</p> <p>13 A. Yeah, I hope so.</p> <p>14 Q. And that everyone should have been</p> <p>15 communicating back and forth?</p> <p>16 A. Yeah.</p> <p>17 Q. Do you now believe that they weren't</p> <p>18 communicating effectively with you?</p> <p>19 MR. DeWICK: Objection.</p> <p>20 BY MR. LeBLANC:</p> <p>21 A. At one point, yeah.</p> <p>22 Q. And at what point weren't they</p> <p>23 communicating with you?</p> <p>24 A. Like, after everything was signed and</p>

<p style="text-align: right;">128</p> <p>1 stuff like that, they never notified me really 2 that it was changing from one insurance company to 3 another insurance company or anything else like 4 that, they never notified me at all. 5 The only way I got notified is if, you 6 know, I got the check and on the letterhead it had 7 a different name on it, that's the only way I got 8 notified, otherwise, I didn't know nothing. 9 Q. Okay. Do you recall a situation where 10 one of the players in this Jenny C. litigation 11 lost their briefcase, does that ring a bell for 12 you? 13 A. No. 14 Q. Okay. If someone used the excuse I can't 15 send you the document because I lost my briefcase, 16 would that be something you would remember? 17 A. Yeah. 18 Q. Okay. 19 A. Most definitely, I'd tell them to go find 20 it. 21 MR. LeBLANC: Can you mark this as 22 Exhibit 13, please. 23 (Exhibit No. 13, Letter dated 6/9/03, 24 marked for identification.)</p>	<p style="text-align: right;">131</p> <p>1 I didn't find any threat, what you're saying is 2 you thought that my wife would be a threat? I'm 3 confused, I'm sorry. 4 Q. That's okay, it was a poor question, I'll 5 give you that. Did he ever tell you that you 6 could be forced to testify about what you and he 7 talked about during your meetings if your wife or 8 your mother were present? 9 A. He never, it never came up really. 10 Q. Okay. Did he ever ask your wife or your 11 mother to wait in the waiting room while you had 12 conversations with him? 13 A. No, not really. 14 Q. Okay. When you had your discussions with 15 Mr. Latti, did he talk to you or did he talk to 16 your wife or your mother? 17 A. It was me and my wife was in the room 18 with him and it was actually directed to both of 19 us. 20 Q. Was he looking at you or was he looking 21 at the other party? 22 A. I don't know, I can't remember. I know 23 he was looking in our direction, let's put it that 24 way.</p>
<p style="text-align: right;">129</p> <p>1 MR. LeBLANC: For the record, I've 2 asked that Exhibit 13 be marked, it's a letter 3 dated June 9th, 2003 addressed to Dennis Dimon 4 from Sandy Franklin, Annuity Payout Specialist 5 III. 6 BY MR. LeBLANC: 7 Q. Mr. Dimon, do you recognize this letter? 8 A. Yeah, I've seen it a couple times 9 already. 10 Q. Okay, and when it says in the first line 11 here "This letter is in response to a phone call 12 we received from Katherine Dimon." 13 Did you receive more than one letter in 14 response to phone calls by your wife, Kathy? 15 A. No, not that I know of. 16 Q. Okay. Were you involved in the decision 17 to purchase an annuity? 18 A. You mean the settlement? 19 Q. In the Jenny C. settlement? 20 A. I don't quite understand. 21 Q. Okay. 22 A. Was I involved? 23 Q. In the decision to accept an annuity 24 rather than just a cash payment?</p>	<p style="text-align: right;">132</p> <p>1 Q. Okay. When you accepted Mr. Latti's 2 recommendation that you buy an annuity -- 3 MR. DeWICK: Objection. 4 BY MR. LeBLANC: 5 Q. Did you accept Mr. Latti's recommendation 6 that you buy an annuity? 7 MR. DeWICK: Objection. 8 BY MR. LeBLANC: 9 A. I felt that it was the right thing, you 10 know. 11 Q. Did you speak with anyone else about 12 whether or not you wanted to buy an annuity or you 13 should buy an annuity? 14 A. No. 15 Q. After the decision was made to buy an 16 annuity, did you talk to anyone about whether or 17 not that was the right decision to be made for 18 you? 19 A. I took it upon his word, you know, that 20 it was the right thing, and then after we 21 discussed it and stuff, you know, I felt it was 22 the best thing, you know. 23 Q. I'm going to show you what we marked as 24 Exhibit 2. Other than your signature, did you</p>
<p style="text-align: right;">130</p> <p>1 A. No, not really. Mr. Latti had set it all 2 up because he said if I had taken the whole thing, 3 that I'd wind up paying an awful lot of taxes on 4 it and stuff like that, and he said I'd get a lot 5 more out of it by investing it than taking it all 6 at once, so. 7 Q. Okay, and based on his advice to you, you 8 decided to go with the plan that he came up with? 9 A. Right. 10 Q. Okay. Did he ever present you with any 11 other options? 12 A. He said he looked into other options and 13 he felt the one that he gave me was the best that 14 he could find. 15 Q. Okay. Did Mr. Latti ever comment on the 16 fact that your wife or your mother attended the 17 meetings with you? 18 A. No, he didn't really mind. 19 Q. Okay. Did he ever advise you that you 20 may be taking a risk that what you say would not 21 be confidential because your wife was there or 22 your mother was there? 23 A. Anything he had to say, you know, I 24 thought was, you know, the right thing, you know.</p>	<p style="text-align: right;">133</p> <p>1 write anything else on this document? 2 A. No. 3 Q. Okay. Did anyone else in the room write 4 anything else on this document -- 5 A. I'm not sure. 6 Q. -- when you were there? 7 A. I'm not sure. 8 Q. Okay, and this was a document that was 9 presented to you at Mr. Latti's office? 10 A. I'm pretty sure, yeah. 11 Q. Okay. Do you recall on Exhibit 2 if 12 anyone read that to you before you signed it? 13 A. Not that I know of. 14 Q. Okay. Do you know if either your wife or 15 your mother read that on your behalf before you 16 signed it? 17 A. No. 18 Q. Okay. When you were signing this 19 document that we've marked Exhibit 2, did you go 20 over any other documents or sign any other 21 documents at the same meeting? 22 A. I'm not sure to tell you the truth. 23 Q. Okay. Was it common for you to drive all 24 the way up to Boston to Mr. Latti's office just to</p>

<p style="text-align: right;">134</p> <p>1 sign one document?</p> <p>2 A. No.</p> <p>3 Q. Okay. So, would you go up there and take</p> <p>4 care of other business with Mr. Latti at the same</p> <p>5 time?</p> <p>6 A. Right. I only went to his office twice.</p> <p>7 Q. Two times total?</p> <p>8 A. That's it.</p> <p>9 Q. Okay, and one time was you signed the</p> <p>10 annuity application?</p> <p>11 A. Right.</p> <p>12 Q. And what did you go to his office the</p> <p>13 other time for?</p> <p>14 A. Well, the first time was to go over the</p> <p>15 case and stuff like that, and that was basically</p> <p>16 about it, what was going to happen and stuff like</p> <p>17 that.</p> <p>18 Q. Now, why did you decide to file a</p> <p>19 complaint or begin litigation in this case?</p> <p>20 A. What's that, litigation, what's that?</p> <p>21 Q. That's a good question.</p> <p>22 MS. McQUAY: A lawsuit.</p> <p>23 BY MR. LeBLANC:</p> <p>24 Q. A lawsuit, why did you want to bring a</p>	<p style="text-align: right;">137</p> <p>1 Q. And was someone else present both times?</p> <p>2 A. Yeah.</p> <p>3 Q. Who was that?</p> <p>4 A. My wife and Fred.</p> <p>5 Q. And Mr. Benson?</p> <p>6 A. Benson, right.</p> <p>7 Q. Okay, and when a representative of</p> <p>8 Kaplan/Bond calls you on the telephone, do you</p> <p>9 take the call or does your wife take the call?</p> <p>10 A. Sometimes we're not at home and it's left</p> <p>11 on the answering machine.</p> <p>12 Q. But when you are at home?</p> <p>13 A. Either I will or my wife will.</p> <p>14 Q. Okay. Now, was the Kaplan/Bond Group the</p> <p>15 first attorneys you contacted regarding this</p> <p>16 matter, the matter against MetLife and everyone</p> <p>17 else?</p> <p>18 A. Yeah, yeah.</p> <p>19 Q. Okay. Have you ever been represented by</p> <p>20 Kaplan/Bond before?</p> <p>21 A. No.</p> <p>22 Q. Did you know that Mr. Kaplan and</p> <p>23 Mr. Latti used to work together?</p> <p>24 A. Not until he told me.</p>
<p style="text-align: right;">135</p> <p>1 lawsuit in this case?</p> <p>2 A. I felt I had more coming, you know, you</p> <p>3 know, like I said before, I felt I had more money</p> <p>4 coming than what was being, you know, sent to me.</p> <p>5 Q. Okay, and that was more than the twenty</p> <p>6 years you actually got paid?</p> <p>7 A. Yeah, like I said, I thought it was a</p> <p>8 lifetime policy, I thought that's what it meant,</p> <p>9 you know.</p> <p>10 Q. Okay. Did you talk to any friends or</p> <p>11 relatives before you decided to file the lawsuit?</p> <p>12 A. No.</p> <p>13 Q. And unless I clarify, the lawsuit means</p> <p>14 this lawsuit and not the Jenny C. lawsuit, okay?</p> <p>15 A. Right.</p> <p>16 Q. Did you speak with your wife or your</p> <p>17 mother or Mr. Benson about filing a lawsuit?</p> <p>18 A. No.</p> <p>19 Q. Have you ever heard of other people suing</p> <p>20 MetLife?</p> <p>21 A. No.</p> <p>22 Q. Have you ever heard of other people suing</p> <p>23 any of the other defendants in this case?</p> <p>24 A. No.</p>	<p style="text-align: right;">138</p> <p>1 Q. Okay, and did that change your opinion</p> <p>2 about whether or not you wanted to use Mr. Kaplan?</p> <p>3 A. No, not really.</p> <p>4 Q. Did you ever work with Mr. Kaplan back in</p> <p>5 1983?</p> <p>6 A. No.</p> <p>7 Q. Are you related to anyone whose employed</p> <p>8 by Mr. Kaplan's office?</p> <p>9 A. No.</p> <p>10 Q. Do you have any financial arrangements</p> <p>11 with any third party regarding your compensation</p> <p>12 you might receive in this lawsuit?</p> <p>13 A. No.</p> <p>14 Q. And do you know what I mean by financial</p> <p>15 arrangements?</p> <p>16 A. Yeah.</p> <p>17 Q. And what would that be?</p> <p>18 A. Paying them.</p> <p>19 Q. Okay. So, you're not going to pay some</p> <p>20 third party, someone else if you win in this case,</p> <p>21 right?</p> <p>22 A. No.</p> <p>23 Q. Okay. As part of the pleading practice</p> <p>24 in this case, the documents attorneys exchange,</p>
<p style="text-align: right;">136</p> <p>1 Q. And what did you do once you decided to</p> <p>2 file a lawsuit, what did you do to gather the</p> <p>3 facts and the information in this case?</p> <p>4 A. I left it up to my lawyer.</p> <p>5 Q. So, you called your lawyer, and it was</p> <p>6 his job to get all that together?</p> <p>7 A. Right.</p> <p>8 Q. And let me ask you if it's your lawyer's</p> <p>9 responsibility to gather the information in the</p> <p>10 case and he called you and asked you a question</p> <p>11 about a specific fact, would it be your</p> <p>12 responsibility as the client to tell him the</p> <p>13 information you had?</p> <p>14 A. Yeah.</p> <p>15 Q. Okay. Is it your understanding that the</p> <p>16 client and the lawyer should work together --</p> <p>17 A. Yeah, most definitely.</p> <p>18 Q. -- to achieve the same results?</p> <p>19 A. Yeah.</p> <p>20 Q. And during your, actually -- strike that.</p> <p>21 How many times did you meet with your</p> <p>22 attorney at his offices in your current case in</p> <p>23 the Kaplan/Bond offices?</p> <p>24 A. Twice.</p>	<p style="text-align: right;">139</p> <p>1 your attorney produced a document saying that</p> <p>2 roughly the damages in this case are 1.8 million</p> <p>3 dollars.</p> <p>4 Do you know where that figure came from?</p> <p>5 A. No.</p> <p>6 Q. Okay. Do you have any idea how that was</p> <p>7 calculated?</p> <p>8 A. No.</p> <p>9 Q. Do you know if that figure included the</p> <p>10 payments you've already received?</p> <p>11 A. No idea.</p> <p>12 Q. Okay. You testified earlier that you</p> <p>13 weren't aware in 1983 that there was a dispute</p> <p>14 about the terms on the annuity; is that correct?</p> <p>15 A. Yeah, right.</p> <p>16 Q. Okay. Whose fault was it that you</p> <p>17 weren't aware about the dispute?</p> <p>18 MR. DeWICK: Objection.</p> <p>19 BY MR. LeBLANC:</p> <p>20 A. The lawyer, Latti's.</p> <p>21 Q. Was it his responsibility to let you know</p> <p>22 there was a dispute?</p> <p>23 MR. DeWICK: Objection.</p> <p>24</p>

<p style="text-align: right;">140</p> <p>1 BY MR. LeBLANC: 2 A. Most definitely. 3 Q. And as a client, you would expect that 4 your lawyer would advise you regarding that kind 5 of dispute? 6 A. Yeah, I would think so, unless he felt it 7 wasn't necessary. 8 Q. Okay. Do you think it was necessary for 9 him to keep you advised? 10 MR. DeWICK: Objection. 11 BY MR. LeBLANC: 12 A. Oh, yeah, most definitely. 13 Q. Okay. In 1983, do you know if Mr. Latti 14 was paid for his services in the Jenny C. matter? 15 A. As far as I know. 16 Q. Did you ever receive a bill from him 17 saying he wasn't paid? 18 A. No. 19 Q. Okay. Do you think it's fair for him to 20 accept payment on a case that ended up not being 21 what you wanted it to be? 22 MR. DeWICK: Objection. 23 BY MR. LeBLANC: 24 A. I'm not sure what you're saying.</p>	<p style="text-align: right;">143</p> <p>1 MR. LeBLANC: I'll take a little 2 break here. 3 (A short break was taken.) 4 MR. LeBLANC: We're back on record. 5 BY MR. LeBLANC: 6 Q. Since your payments stopped in 2003, have 7 you ever tried to contact Mr. Decof, the guardian? 8 A. No. 9 Q. Okay, and is it your understanding that 10 by filing a lawsuit, a complaint, you're saying 11 certain parties did things wrong? 12 A. Oh, yeah, most definitely. 13 Q. And as part of the breakdown of that, 14 sometimes lawyers include counts, specific 15 allegations of wrongdoing. I'd like you to look 16 at Exhibit 1, Count X, and I'll read this section 17 for you, "Dennis Dimon vs. Metropolitan Life 18 Insurance Company, Breach of Contract." 19 A. Hmm mmm. 20 Q. What do you understand the term breach of 21 contract to mean? 22 A. It means ain't following up on their part 23 of the bargain. 24 Q. And what is your understanding of what</p>
<p style="text-align: right;">141</p> <p>1 Q. Mr. Latti, assuming Mr. Latti received 2 his payment. 3 A. Right. 4 Q. Do you think it's fair that he got paid 5 and you didn't get what you wanted to get out of 6 the case? 7 MR. DeWICK: Objection. 8 BY MR. LeBLANC: 9 A. Yeah, I would say so. 10 Q. You would say it's fair or it's not fair? 11 A. It's not fair. 12 Q. Okay. Can you tell me what your 13 birthdate is? 14 A. 12/9/59. 15 Q. And do you know what your account number 16 at Citizens Bank is? 17 A. No. 18 Q. After 2003 when you stopped receiving 19 payments, did you have any discussions with any of 20 the defendants in this case about not receiving 21 payments? 22 A. Um, like, who, family and stuff? 23 Q. Any of the defendants, any of the parties 24 to the case?</p>	<p style="text-align: right;">144</p> <p>1 their part of the bargain was? 2 A. Is to pay what I had coming to me. 3 Q. And what did you have coming to you? 4 A. I don't know exactly how much, but it was 5 supposed to have been a check until I passed away. 6 Q. Okay. It says here in paragraph 66 on 7 page 11, "The plaintiff suffered financial losses 8 as a result of the defendant's breach of 9 contract." 10 What financial losses did you suffer? 11 A. Well, I had to turn around and had to 12 stop fishing because some of the stuff that my 13 wife couldn't take care of I had to take care of 14 because we needed money, and you know, needed my 15 opinion, not opinion, what do I want to say, my 16 okay to go ahead with, stuff like that, so, I 17 missed fishing trips because of that. 18 Q. Okay, and how many fishing trips? 19 A. Um, it was, like, two or three that I can 20 remember. 21 Q. And do you know what time frame that was? 22 A. Um, it was in the course of a couple of 23 three weeks anyway. 24 Q. Did you suffer any other financial</p>
<p style="text-align: right;">142</p> <p>1 A. No. 2 Q. Did you call Mr. Latti directly? 3 A. I called his office. 4 Q. Okay, and did anyone there make any 5 statements about whether or not it was their 6 responsibility or they were at fault? 7 A. No. 8 Q. Were you angry when you found out you 9 weren't going to be receiving payments anymore? 10 A. Curious was more the word for it because 11 I was wondering how come, you know, one thing was 12 said and all of a sudden, everything's turned 13 around and stopped. 14 Q. Earlier when you testified that you 15 earned roughly \$20,000, did that include the 16 annuity payments? 17 A. No. 18 Q. So, that's separate from the annuity 19 payments? 20 A. Right. 21 Q. Okay. 22 A. I wasn't even getting them when I made 23 that. 24 Q. Okay.</p>	<p style="text-align: right;">145</p> <p>1 losses? 2 A. That and took everything in the bank to 3 pay my mortgage and my loans and everything else 4 because I didn't have much money ahead, and I 5 wiped out everything I had. 6 Q. It says here in paragraph 69, "The 7 defendant negligently misrepresented the terms of 8 the contract stating that the contract was for 9 life, guaranteed for twenty years." 10 Did you at any time have discussions with 11 Charter Security Life Insurance Company about what 12 the terms of the contract were? 13 A. No. 14 Q. Okay. So, to your knowledge, did the 15 defendant, in this case, Charter Security Life or 16 Metropolitan Life Insurance Company, ever state 17 that the contract was for life, guaranteed for 18 twenty years to you? 19 A. No. 20 Q. This paragraph 64, and I'll read the 21 entire paragraph, "The plaintiff and the defendant 22 entered into a contract whereby the defendant was 23 to provide a lifetime annuity guaranteed for 24 twenty years in exchange for the plaintiff</p>

<p style="text-align: right;">146</p> <p>1 releasing all claims for injuries suffered by the 2 plaintiff in a fishing accident." 3 A. Hmm mmm. 4 Q. And the fishing accident that they refer 5 to or that's referred to here, is that the 6 Jenny C. fishing accident? 7 A. Yes. 8 Q. Okay, and did you release all your claims 9 in the Jenny C. fishing accident? 10 A. Yeah, releasing all them, yeah. 11 Q. Do you know if you had any claims in the 12 Jenny C. case against MetLife or Charter Security 13 Life Insurance Company? 14 A. No. 15 Q. Okay. Your claims in Jenny C. were 16 against the boat? 17 A. Right. 18 Q. And the insurance companies insuring the 19 boat? 20 A. Right, right. 21 Q. But that wasn't Charter Security or 22 MetLife to your knowledge? 23 A. Right. 24 Q. Okay. So, if you -- strike that.</p>	<p style="text-align: right;">149</p> <p>1 that Jenny C.'s insurance would pay your medical 2 expenses. 3 Does that capture your earlier testimony? 4 A. Yeah. 5 Q. And after you won at trial, the jury 6 awarded you much more than medical expenses; is 7 that correct? 8 A. Right. 9 Q. So, it's fair to say you were happy with 10 those results? 11 A. Yeah. 12 Q. And is it fair to say that you were 13 satisfied with the representation that Latti 14 Associates did for you in the underlying Jenny C. 15 litigation? 16 A. Yes. 17 Q. And it's safe to say that you expressed 18 this in fact to the guardian ad litem, that you 19 were satisfied with the services; is that correct? 20 A. Right. 21 Q. Okay. Now, the judge in the Jenny C. 22 case appointed a guardian to help you understand 23 the terms of the settlement; is that correct? 24 A. Right.</p>
<p style="text-align: right;">147</p> <p>1 Mr. Dimon, did I say anything today that 2 you didn't get the meaning of but answered the 3 question anyway? 4 A. No. 5 Q. Okay. Do you feel that you understood 6 all the questions I asked you? 7 A. Yeah. 8 Q. And that you answered them all truthfully 9 and honestly? 10 A. Yeah. 11 Q. Okay, and that the documents we looked at 12 were not documents that caused you any kind of 13 confusion when I showed them to you today? 14 A. You know, a few of them I never saw, 15 that's all. 16 Q. Okay, but if you had any question about 17 any of the documents, do you feel you had an 18 opportunity to ask that question or to seek advice 19 of your counsel? 20 A. Yeah. 21 Q. Okay. What, if anything, has your mother 22 said about this lawsuit against MetLife and all of 23 the defendants? 24 A. Um, she didn't really have much to say</p>	<p style="text-align: right;">150</p> <p>1 Q. And you met with this guardian on more 2 than one occasion I believe? 3 A. Just one that I know of. 4 Q. Just one? 5 A. That I can remember, right. 6 Q. Okay. During this meeting, did the 7 guardian explain to you the terms of the 8 settlement of the Jenny C. case? 9 A. The full terms, yeah, he did. 10 Q. And he explained them to you so that you 11 would understand them? 12 A. Right. 13 Q. And do you recall what he explained the 14 terms of the settlement to be? 15 A. Right. Oh, do you want me to explain it 16 to you? 17 Q. Please. 18 A. That this was a lifetime policy, and you 19 know, that it's twenty years, and he said that it 20 seemed like a really good deal and stuff like 21 that, and you know, I can't remember exactly what 22 was all said, but he asked me what I was going to 23 do with the money, and you know, I told him I've 24 been looking into some property, buying a house</p>
<p style="text-align: right;">148</p> <p>1 about it, she just said, "Oh, do what you got to 2 do." 3 Q. And was she upset when you stopped 4 receiving checks in 2003? 5 A. Yeah, she was, yeah, kind of. 6 Q. And were you upset? 7 A. Wouldn't you? 8 Q. Is that a yes? 9 A. Yes, sorry. 10 Q. That's okay. 11 MR. LeBLANC: I don't have any 12 further questions right now. Thank you, 13 Mr. Dimon. 14 MR. KEANE: Attorney DeWick is going 15 to ask you some questions. 16 CROSS-EXAMINATION 17 BY MR. DeWICK: 18 Q. How are you doing, Mr. Dimon, I 19 introduced myself earlier, my name is Jay DeWick, 20 and I represent Mr. Latti and all the Latti 21 entities. 22 I believe you testified earlier something 23 to the effect at the time you were injured, you 24 thought that perhaps you could make a claim and</p>	<p style="text-align: right;">151</p> <p>1 and stuff like that, and you know, that's 2 basically the extent to it. 3 Q. Okay. So, he said that you, the way he 4 expressed the terms of the annuity to you were 5 that the payments would continue for your life? 6 A. Right. 7 Q. And he expressed to you he thought this 8 was a good deal as you said? 9 A. Right. 10 Q. So, earlier you testified I believe that 11 you didn't speak with anyone else about whether 12 the annuity was a good idea except for Mr. Latti, 13 but first of all, is it true you testified earlier 14 that you did not speak with anyone except 15 Mr. Latti about whether to accept the annuity? 16 A. Right. 17 Q. But that's not true, is it? 18 A. Yeah, it is because the only other person 19 in the room was my wife because that was the only 20 time it was discussed. 21 Q. Didn't we just go over the fact it was 22 also discussed with the guardian, however, that it 23 was a good deal? 24 A. Oh, yeah, true, I'm sorry about that.</p>

<p style="text-align: right;">152</p> <p>1 Q. So, just so the record is straight, you 2 discussed the terms of the annuity with Mr. Latti? 3 A. First. 4 Q. First, but you also discussed the terms 5 of the annuity with the guardian? 6 A. Right. 7 Q. And he explained to you what they were so 8 that you understood them? 9 A. Right. 10 Q. And he, using your words, said that it 11 was a good deal? 12 A. Right. 13 Q. When you started receiving checks from 14 the annuity, originally it was Charter Life and 15 then it became MetLife; is that correct? 16 A. Right. No, there was another one in 17 between for a short term. 18 Q. Do you recall who that was? 19 A. No, I don't. 20 Q. Okay. Did you always receive these 21 checks directly from the insurance company that 22 was paying them? 23 A. Right. 24 Q. That's a yes?</p>	<p style="text-align: right;">155</p> <p>1 A. No, I don't. 2 Q. And what did you ask them to do at that 3 time, if anything? 4 A. Well, I asked them if they could find out 5 what was going on and stuff like that, and they 6 did get back to me at one time and said that it 7 was on its way, that it was in the mail. 8 They didn't specify exactly what had 9 happened or anything else like that, they just 10 said, you know, that it was on its way. 11 Q. Okay. Other than that time where the 12 payments were two months late, were there other 13 times that you contacted Latti Associates? 14 A. No. 15 Q. So, that the next time you contacted them 16 after that was in June of '03 when the payments 17 stopped; is that correct? 18 A. Basically, yeah. 19 Q. Well, are there any other times that you 20 can recall between -- 21 A. Not that I can recall, no. 22 Q. To your knowledge, did anyone on your 23 behalf, your wife or your mother or anyone else, 24 contact Latti Associates during that time?</p>
<p style="text-align: right;">153</p> <p>1 A. Yes, true. 2 Q. They did not come through any other third 3 party? 4 A. No. 5 Q. For example, they didn't come through 6 Latti Associates? 7 A. Right. 8 Q. After the Jenny C. case settled and you 9 began receiving the checks, did you have any 10 contact after that point with anyone from Latti or 11 Latti & Associates? 12 A. Very brief, yeah, nothing as far as 13 discussing on how much, you know, what was going 14 on with the money itself. 15 Q. When did that contact occur? 16 A. Um, just when simple things would come 17 up, like, one time when it changed hands, it was, 18 it was kind of late and stuff like that, it was, 19 like, almost two months late, something like that, 20 and we had to call up and find out what was going 21 on then, you know, because we always tried to keep 22 track of it to find out what was going on. 23 You know, there were brief, they were 24 just brief, you know.</p>	<p style="text-align: right;">156</p> <p>1 A. Not that I know of. 2 MR. DeWICK: Are the exhibits around 3 here somewhere? 4 MR. LeBLANC: They are. 5 BY MR. DeWICK: 6 Q. Mr. Dimon, if you will just bear with me 7 here. You testified earlier that, and you can 8 look through those exhibits as I'm asking the 9 question, you testified earlier that you do not 10 recall receiving the letters which have been 11 marked Exhibit 5, 6, 7, and 9, and take a shot at 12 looking at them. 13 A. No, I don't. 14 MR. KEANE: Here they are 15 (indicating). 16 MR. DeWICK: Look through all of 17 them, take your time. 18 MR. KEANE: I believe you asked for 19 5, 6, 7, and 9? 20 MR. DeWICK: 5, 6, 7, and 9, exactly, 21 and I'll ask the question again, Mr. Dimon. 22 BY MR. DeWICK: 23 A. Some of them I've seen and some of them I 24 haven't seen.</p>
<p style="text-align: right;">154</p> <p>1 Q. So, there was a time when the payments 2 from the insurance company were two months late? 3 A. Yeah, generally when it changed hands, 4 that's the way I took it, you know. 5 Q. But do you recall a specific instance 6 when the payments were two months late? 7 A. Just one that I know of, yeah. 8 Q. And do you recall generally when that 9 happened, what year, how long after the annuity 10 issued? 11 A. No, I can't remember right offhand, no, 12 exactly when. 13 Q. Was it closer in time to when the annuity 14 issued or closer in time to when the annuity 15 stopped paying, do you know that? 16 A. It was when the annuity was first going 17 on, it was, like, maybe, I would say a year after 18 it had started. 19 Q. Okay, and when the payments were two 20 months late, you contacted Latti Associates at 21 that point? 22 A. Right. 23 Q. And do you recall who you spoke to 24 directly?</p>	<p style="text-align: right;">157</p> <p>1 Q. Okay. Well, you testified earlier that 2 5, 6, 7, and 9, that you do not recall receiving 3 any of those at the time. 4 A. Right. 5 Q. Is that correct? 6 A. That's correct. 7 Q. Do you have any reason to believe that 8 you did not receive them? 9 A. No. 10 Q. Where were you living at the time, during 11 this time period, the summer through the fall of 12 1983? 13 A. In Greenwood Drive. 14 Q. And that was your mailing address as 15 well? 16 A. Yes, it was. 17 Q. And I'm sorry, was that West Kingston? 18 A. No, that was in Peacedale. 19 MR. DeWICK: Just give me a moment. 20 BY MR. DeWICK: 21 Q. Mr. Dimon, you testified earlier you 22 received this document, and I'm referring to page 23 3 of Exhibit 15, you received this document minus 24 the stamp from Mr. Latti is your recollection?</p>

<p style="text-align: right;">158</p> <p>1 A. From himself, yes.</p> <p>2 Q. And do you remember when you received</p> <p>3 that from him?</p> <p>4 A. The day that we signed the contract for</p> <p>5 this policy.</p> <p>6 Q. And have we seen the contract for this</p> <p>7 policy?</p> <p>8 A. No.</p> <p>9 Q. And did you receive a copy of that signed</p> <p>10 contract?</p> <p>11 A. Nothing.</p> <p>12 Q. Do you know --</p> <p>13 A. This (indicating) is the only paper I</p> <p>14 received at that time.</p> <p>15 Q. Do you know where the signed copy of the</p> <p>16 annuity went after you signed it?</p> <p>17 A. No.</p> <p>18 Q. Who else was in the room when you signed</p> <p>19 it?</p> <p>20 A. My wife, and I'm not sure if one of his</p> <p>21 associates was there too, I'm not sure.</p> <p>22 Q. So, your wife, yourself, Mr. Latti?</p> <p>23 A. Right.</p> <p>24 Q. And perhaps one of his associates?</p>	<p style="text-align: right;">161</p> <p>1 A. Right.</p> <p>2 Q. Which makes you, you'll be this December,</p> <p>3 what, forty-seven years old?</p> <p>4 A. Yeah.</p> <p>5 Q. My math is right, you'll be forty-seven</p> <p>6 in December?</p> <p>7 A. Yeah.</p> <p>8 Q. Okay. So, now, you testified I believe</p> <p>9 that, if I heard you correctly, that you were told</p> <p>10 that and I think you used the word they used a</p> <p>11 life expectancy of fifty for you in coming up with</p> <p>12 this annuity policy?</p> <p>13 A. Yes, correct.</p> <p>14 Q. Would you tell me more about that, who</p> <p>15 told you that a life expectancy of fifty was used</p> <p>16 in coming up with this annuity policy?</p> <p>17 A. Well, the doctors in Boston Ear & Eye</p> <p>18 Infirmary and stuff like, there was a few</p> <p>19 specialists and stuff like that, and I guess they</p> <p>20 were trying to base it on, you know, the life</p> <p>21 expectancy of the family, stuff like that, and</p> <p>22 they wanted to know, you know, like, when my</p> <p>23 father passed away, and well, he didn't pass away</p> <p>24 then but my grandfathers and down the family tree.</p>
<p style="text-align: right;">159</p> <p>1 A. I think so.</p> <p>2 Q. Anyone else?</p> <p>3 A. No, not that I know of.</p> <p>4 Q. And do you recall, you don't recall the</p> <p>5 date that that was signed, do you?</p> <p>6 A. No, not right off.</p> <p>7 Q. But you recall it was the same day that</p> <p>8 he showed you page 3 --</p> <p>9 A. Yeah.</p> <p>10 Q. -- let me finish, it's hard for her, it's</p> <p>11 impossible for her to write both of us at the same</p> <p>12 time, actually.</p> <p>13 A. Sorry.</p> <p>14 Q. Not hard, impossible. You signed the</p> <p>15 annuity the same day you received page 3 of</p> <p>16 Exhibit 5, the proposal from Mr. Latti; is that</p> <p>17 correct?</p> <p>18 A. Right.</p> <p>19 Q. And do you know whether that</p> <p>20 was -- strike that.</p> <p>21 Do you recall how long before you began</p> <p>22 to receive payments that you signed the annuity</p> <p>23 contract, how much time elapsed between the</p> <p>24 signing and receiving your first payment?</p>	<p style="text-align: right;">162</p> <p>1 Q. So, someone took a look at your medical</p> <p>2 records?</p> <p>3 A. Right.</p> <p>4 Q. And based on your medical records, it's</p> <p>5 your understanding that a decision was arrived at</p> <p>6 that you would have a life expectancy of only</p> <p>7 about fifty years?</p> <p>8 A. Right.</p> <p>9 Q. Which means you've got three years to go,</p> <p>10 let's hope you do better than they estimated.</p> <p>11 A. Well, it's sometime I guess.</p> <p>12 Q. Who told you that in fact they had</p> <p>13 determined and that were using a life expectancy</p> <p>14 of fifty years in connection with this annuity</p> <p>15 policy?</p> <p>16 A. I'm pretty sure it was Latti.</p> <p>17 Q. Latti told you that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 MS. McQUAY: I have no further</p> <p>21 questions, thank you.</p> <p>22 MR. KEANE: Nothing.</p> <p>23 MR. LeBLANC: Mr. O'Driscoll, do you</p> <p>24 have any questions?</p>
<p style="text-align: right;">160</p> <p>1 A. Not really, but it didn't seem like a</p> <p>2 very long time. I can't tell exactly how much</p> <p>3 time in between.</p> <p>4 Q. Are you able to estimate? Only if you</p> <p>5 are able.</p> <p>6 A. I would say within a couple of weeks</p> <p>7 maybe.</p> <p>8 Q. And after, in June of 2003, when your</p> <p>9 wife contacted Mr. Latti's daughter to ask whether</p> <p>10 she had documents regarding the settlement, after</p> <p>11 that contact where she said that no such document,</p> <p>12 that they did not have documents in their</p> <p>13 possession any longer, was there any further</p> <p>14 contact with Latti's office after that?</p> <p>15 A. Not as far as I know, not from myself.</p> <p>16 Q. Okay.</p> <p>17 MR. DeWICK: I have nothing further,</p> <p>18 thank you.</p> <p>19 MS. McQUAY: Just a couple of</p> <p>20 questions, Mr. Dimon.</p> <p>21 RECROSS EXAMINATION</p> <p>22 BY MS. McQUAY:</p> <p>23 Q. I believe you testified that you were</p> <p>24 born in December of 1959?</p>	<p style="text-align: right;">163</p> <p>1 MR. O'DRISCOLL: Just a few.</p> <p>2 RECROSS EXAMINATION</p> <p>3 BY MR. O'DRISCOLL:</p> <p>4 Q. Good afternoon, Mr. Dimon, my name is Tim</p> <p>5 O'Driscoll.</p> <p>6 A. Hello.</p> <p>7 Q. Mr. Dimon, have you ever had any</p> <p>8 discussions with anyone at American Motorist</p> <p>9 Insurance Company regarding your annuity payments?</p> <p>10 A. Not that I can recollect, no.</p> <p>11 Q. Have you ever had any correspondence with</p> <p>12 anyone at American Motorist Insurance Company</p> <p>13 regarding your annuity payments?</p> <p>14 A. No.</p> <p>15 Q. Have you ever had any contact at all with</p> <p>16 anyone at American Motorist Insurance Company</p> <p>17 regarding your annuity payments?</p> <p>18 A. My wife did a couple of times, but that</p> <p>19 was way before they changed hands.</p> <p>20 Q. Before who changed hands, sir?</p> <p>21 A. Before, it went from American Motors to</p> <p>22 whatever it is now, I can't remember what it is</p> <p>23 now, or they went out of business or whatever they</p> <p>24 did, I'm not sure.</p>

<p style="text-align: right;">164</p> <p>1 Q. Have you ever had any discussions with 2 anyone at Kemper Insurance Company regarding your 3 annuity payments? 4 A. No. 5 Q. Have you ever exchanged any 6 correspondence with anyone at Kemper Insurance 7 Company regarding your annuity payments? 8 A. No. 9 Q. Have you ever had any contact with anyone 10 at Kemper Insurance Company regarding your annuity 11 payments? 12 A. No. 13 MR. O'DRISCOLL: I have no further 14 questions, thank you. 15 MR. LeBLANC: Just one here. 16 REDIRECT EXAMINATION 17 BY MR. LeBLANC: 18 Q. Mr. DeWick asked if you had any reason to 19 believe that you did not receive Exhibits 5, 6, 7, 20 and 9, those letters we talked about earlier. 21 A. Hmm mmm. 22 Q. And you answered no, and that confused me 23 a little bit. I guess my question to you then is 24 do you have any reason to believe that you</p>	<p style="text-align: right;">167</p> <p>1 A. Somewhere around there. 2 Q. Did they tell you that six months or 3 eight months or nine months before that they had 4 received letters saying there were questions about 5 the contract terms? 6 A. No. 7 Q. So, even after Latti & Associates 8 received these letters, they never contacted you 9 or never informed you even when you contacted them 10 that there was this dispute? 11 A. Right. 12 Q. And when you told Mr. Decof that you were 13 satisfied with the services of Latti & Associates, 14 was that before you found out that there was this 15 dispute and Latti & Associates hadn't informed you 16 about the dispute? 17 A. Right. 18 Q. Because your meeting with Mr. Decof was 19 in April, May 1983; is that right? 20 A. Right. 21 Q. Okay. Now that you know what you know 22 now about Latti & Associates and how they handled 23 your representation, has your opinion changed in 24 terms of whether you are satisfied with their</p>
<p style="text-align: right;">165</p> <p>1 actually did receive those exhibits, those 2 letters? 3 A. There was one in there from Metropolitan 4 I think, I thought there was one in there from the 5 Metropolitan, but I guess I didn't see it, but 6 that was the only one that I was remembering, not 7 the other ones. 8 Q. Okay, let's do this, Mr. Dimon. I'm 9 going to show you in sequence Exhibits 5, 6, 7, 10 and 9, okay? 11 A. Yeah. 12 Q. Now, showing you Exhibit 5, do you have 13 any reason to believe that you actually received a 14 copy of this document from Latti & Associates? 15 A. No, I never received a copy. 16 Q. If we go to Exhibit 6, looking at this 17 document, do you have any reason to believe that 18 you actually received a copy of this document? 19 A. No. 20 Q. Okay. Exhibit 7? 21 A. No. 22 Q. And Exhibit 9? 23 A. No. 24 Q. Okay, and when you responded no, that</p>	<p style="text-align: right;">168</p> <p>1 services? 2 A. Well, myself, it's a hard question, you 3 know. I'm upset because of the simple fact they 4 didn't notify me about this and stuff like that, I 5 think I'm more upset about that than anything, you 6 know. 7 If this is what's supposed to have taken 8 place, they should have notified me that's what 9 was going to be taking place, but nothing was ever 10 changed or anything else like that as far as my, 11 you know, I can't find the word, but I think you 12 know what I mean, but you know, and the simple 13 fact he stated himself by word of mouth that it 14 was a lifetime policy, twenty years intendency or 15 whatever. 16 Q. Okay. 17 MR. LeBLANC: I have no further 18 questions. 19 BY MR. LeBLANC: 20 A. I mean if somebody had asked me, you 21 know, an attorney, I'd definitely give it to him 22 because, you know, I thought they did a great job 23 on the case and I'd definitely recommend them to 24 somebody, you know.</p>
<p style="text-align: right;">166</p> <p>1 means no, you didn't receive a copy of the 2 document? 3 A. Right. 4 Q. Okay. Now, when you testified in 5 response to Mr. DeWick's question regarding 6 contacting Latti Associates about a check that was 7 a couple of months late, did I hear you right that 8 you said about one year into your annuity 9 payments, there was a check that was a couple of 10 months late? 11 A. Right. 12 Q. And that you called Latti & Associates 13 about that? 14 A. Right. 15 Q. And that you spoke with someone at Latti 16 & Associates? 17 A. Yeah. 18 Q. Do you know who you spoke with? 19 A. No, I don't. 20 Q. Do you recall if it was Mr. Latti? 21 A. No, it wasn't. 22 Q. Okay, and at that time, a year into the 23 contract, which would put you in roughly the June 24 1984 time frame.</p>	<p style="text-align: right;">169</p> <p>1 I mean you can't use one incident against 2 another, you know, I don't hold grudges like that. 3 Q. Okay. 4 MR. DeWICK: Nothing. 5 MR. O'DRISCOLL: No. 6 MR. KEANE: We're all set. 7 (Whereupon, the deposition suspended 8 at 3:50 p.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>

170	<p>1 I, Dennis J. Dimon, having read the</p> <p>2 foregoing transcript of my testimony, do hereby</p> <p>3 certify under the pains and penalties of perjury</p> <p>4 the same contains a true and accurate record of my</p> <p>5 answers to the questions herein set forth,</p> <p>6 together with correction pages, if any, attached.</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 <u>DENNIS J. DIMON</u></p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
171	<p>1 <u>ERRATA SHEET</u></p> <p>2</p> <p>3 <u>PAGE</u> <u>LINE</u> <u>DESCRIPTION</u></p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
172	<p>1 <u>CERTIFICATE</u></p> <p>2</p> <p>3 COMMONWEALTH OF MASSACHUSETTS</p> <p>4 SUFFOLK, SS.</p> <p>5</p> <p>6</p> <p>7 I, Julie A. Healey, Certified Shorthand</p> <p>8 Reporter, Registered Professional Reporter, and</p> <p>9 Notary Public in and for the Commonwealth of</p> <p>10 Massachusetts, do hereby certify:</p> <p>11 That DENNIS J. DIMON, the witness whose</p> <p>12 testimony is hereinbefore set forth, was duly</p> <p>13 sworn by me and that such testimony is a true and</p> <p>14 accurate record of my stenotype notes taken in the</p> <p>15 foregoing matter, to the best of my knowledge,</p> <p>16 skill and ability.</p> <p>17 IN WITNESS WHEREOF, I have hereunto set</p> <p>18 my hand and Notarial Seal this 6th day of July,</p> <p>19 2006.</p> <p>20</p> <p>21</p> <p>22 <u>Julie A. Healey</u></p> <p>23 CSR, RPR</p> <p>Notary Public</p> <p>24 My Commission Expires: March 26, 2010</p>

Associates - 1:12, 1:20, 2:6, 2:17, 32:10, 45:11, 46:1, 52:11, 53:21, 54:20, 78:17, 87:13, 108:9, 108:22, 110:9, 112:3, 113:10, 113:23, 114:17, 116:6, 116:11, 116:14, 117:15, 119:15, 119:21, 120:6, 123:16, 124:3, 149:14, 153:6, 153:11, 154:20, 155:13, 155:24, 165:14, 166:6, 166:12, 166:16, 167:7, 167:13, 167:15, 167:22 associates - 158:21, 158:24 Associates' - 112:2 assume - 48:15 assuming - 141:1 Att - 71:22, 88:11 attached - 170:6 attend - 60:24 attended - 50:12, 66:21, 130:16 attorney - 16:17, 48:21, 50:2, 50:3, 50:7, 50:18, 50:22, 51:11, 52:4, 52:10, 52:13, 52:14, 53:6, 53:9, 55:23, 57:16, 58:14, 61:4, 61:19, 62:10, 62:24, 63:7, 63:21, 67:6, 86:23, 104:16, 105:17, 105:20, 109:22, 114:11, 114:17, 117:1, 117:6, 125:15, 125:18, 127:3, 136:22, 139:1, 168:21 Attorney - 148:14 attorney's - 49:18, 60:14 Attorneys - 113:10, 116:6, 119:15 attorneys - 48:9, 50:19, 51:6, 53:11, 54:19, 137:15, 138:24 August - 112:12, 114:2, 114:4, 114:16 authorize - 121:3, 121:4 Avenue - 2:3 average - 25:22 awarded - 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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.

DENNIS DIMON,
Plaintiff

05-11073 REK

vs.

COMPLAINT

MICHAEL B. LATTI, LATTI
ASSOCIATES, LATTI & ANDERSON
LLP, METROPOLITAN LIFE
INSURANCE COMPANY, KEMPER
INSURANCE COMPANY, and
MORGAN STANLEY DW. INC.,
Defendants

MAGISTRATE JUDGE T. L. J.

AMOUNT \$1073
SUMMONS ISSUED ☒
LOCAL RULE 4.1 ☒
WAIVER FORM ☒
MCF ISSUED ☒

INTRODUCTION

1. This is a contract and malpractice action for monetary relief resulting from the premature cancellation of the plaintiff's structured settlement payments, which occurred on or about May 5, 2003 when the defendants ceased paying the settlement due the plaintiff as a result of a personal injury action in 1983. The plaintiff released the defendant shipowner in his personal injury action in consideration of a life annuity guaranteed for 20 years which the court approved. The plaintiff asserts a cause of action against the defendants based upon their breach of the settlement contract and for the breach of fiduciary duties by his former attorney.

JURISDICTION

2. Jurisdiction is proper pursuant to 28 U.S.C., sec. 1332(a). Venue is proper in the

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District Court of Massachusetts pursuant to 28 U.S.C., sec. 1391(c).

PARTIES

3. The plaintiff, Dennis Dimon, is of legal age and resides in West Kingston, Rhode Island.
4. The defendant, Michael B. Latti, is now a resident of the State of Maine and a lawyer licensed to practice law in the Commonwealth of Massachusetts who formerly resided in and practiced law in the Commonwealth of Massachusetts in 1983.
5. The defendant, Latti Associates, was a law firm created under the laws of the Commonwealth of Massachusetts by Michael B. Latti, with a principal place of business at 30-31 Union Wharf, Boston, Massachusetts.
6. The defendant, Latti & Anderson, LLP, is a law firm created under the laws of the Commonwealth of Massachusetts, with a principal place of business at 30-31 Union Wharf, Boston, Massachusetts and is the successor in interest to Latti Associates.
7. The defendant, Metropolitan Life Insurance Company is an insurance company with a principal place of business in New York, New York, and regularly conducts business in the Commonwealth of Massachusetts.
8. The defendant, Kemper Insurance Company is an insurance company with a principal place of business in Long Grove, Illinois, which regularly conducts business in the Commonwealth of Massachusetts.
9. The defendant, Morgan Stanley, is a brokerage company with a principal place of business in New York, New York, and regularly conducts business in the Commonwealth of Massachusetts.

FACTUAL ALLEGATIONS

10. In 1981, the plaintiff was severely injured while serving as a member of the crew aboard the F/V JENNY C, resulting in the loss of his eye.
11. On or about February 4, 1983, following a trial, a jury awarded the plaintiff \$710,000 for his injuries against the defendant, Jenny C., Inc.
12. The plaintiff was represented at all times for the trial and subsequent settlement by Latti Associates, operated under the authority of Michael B. Latti.
13. Latti & Anderson, L.P. is the successor in interest to Latti Associates.
14. Following the verdict, the parties entered into a settlement agreement, approved by the United States District Court for the District of Rhode Island and a *guardian ad litem* appointed by the court, providing the plaintiff with a lump sum payment of \$250,000 and an annuity for the life of the plaintiff and guaranteed for twenty (20) years which would continue for the life of the plaintiff. The annuity would pay the plaintiff a set amount (beginning at \$1,450.45) each month with the amount increasing by three (3) percent each year.
15. Prior to the settlement the court appointed Leonard Decof, Esquire as *guardian ad litem* to review the settlement and to report to the court.
16. The *guardian ad litem* was appointed by the court due to the plaintiff's inability to read or understand the settlement contract and was an extra measure by the court to protect the plaintiff even though he had separate counsel through Latti Associates.
17. American Motorists Insurance Company (now Kemper Insurance Company) applied for the annuity.

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33. The defendant failed to act reasonably in not informing the plaintiff of the alleged clerical error changing the terms of the annuity.
34. Due to the actions of the defendant, the plaintiff suffered financial loss.

REQUEST FOR RELIEF

1. That this Court, under Count II, enter judgment in favor of the plaintiff.
2. For such other relief as this Court deems appropriate.

COUNT III

(Dennis Dimon v. Michael B. Latti -
Breach of Contract)

35. Paragraphs 1-34 are realleged and incorporated by reference.
36. The plaintiff and the defendant entered into a contract for the defendant to provide legal representation for injuries suffered by the plaintiff in a fishing boat accident.
37. The defendant breached this contract by failing to provide competent legal representation, in failing to inform the plaintiff of an alleged clerical error changing the plaintiff's settlement agreement, and failing to ensure that the plaintiff understood the alleged changes to the settlement agreement.
38. The plaintiff suffered financial losses as a result of the defendant's breach of contract.

REQUEST FOR RELIEF

1. That this Court, under Count III, enter judgment in favor of the plaintiff against the defendant for breach of contract.
2. For such other relief as this Court deems appropriate.

COUNT IV
(Dennis Dimon v. Latti Associates-
Breach of Fiduciary Duty)

39. Paragraphs 1-38 are realleged and incorporated by reference.
40. A lawyer has a duty to act in the best interest of his client and not to act in any way adverse or contrary to the interests of the client.
41. The plaintiff relied upon the defendant law firm for advice, counsel, and information in order to make an informed decision prior to entering into any settlement agreement whereby the plaintiff would forfeit his rights to future compensation for his injuries.
42. Due to the defendant's breach, the plaintiff has suffered financial loss.

REQUEST FOR RELIEF

1. That this Court, under Count IV, enter judgment in favor of the plaintiff against the defendant for breach of fiduciary duty.
2. For such other relief as this Court deems appropriate.

COUNT V
(Dennis Dimon v. Latti Associates -
Negligence)

43. Paragraphs 1-42 are realleged and incorporated by reference.
44. A lawyer has a duty to act with reasonable care and to use the skill of a reasonably competent lawyer in representing a client.
45. The defendant failed to act reasonably in not informing the plaintiff and ensuring that the plaintiff understood the changes to the settlement agreement.
46. Due to the actions of the defendant, the plaintiff suffered financial loss.

REQUEST FOR RELIEF

1. That this Court, under Count V, enter judgment in favor of the plaintiff.
2. For such other relief as this Court deems appropriate.

COUNT VI

(Dennis Dimon v. Latti Associates -
Breach of Contract)

47. Paragraphs 1-46 are realleged and incorporated by reference.
48. The plaintiff and the defendant entered into a contract for whereby the defendant was to provide legal representation for injuries suffered by the plaintiff in a fishing accident.
49. The defendant breached this contract by failing to provide competent legal representation, failing to inform the plaintiff of changes to the plaintiff's settlement agreement, and failing to ensure that the plaintiff understood the changes to the settlement agreement.
50. The plaintiff suffered financial losses as a result of the defendant's breach of contract.

REQUEST FOR RELIEF

1. That this Court, under Count VI, enter judgment in favor of the plaintiff against the defendant for breach of contract.
2. For such other relief as this Court deems appropriate.

COUNT VII

(Dennis Dimon v. Latti & Anderson LLP -
Breach of Fiduciary Duty)

51. Paragraphs 1-50 are realleged and incorporated by reference.

52. A lawyer has a duty to act in the best interest of his client and not to act in any way adverse or contrary to the interests of the client.
53. The plaintiff relied upon the defendant for advice, counsel, and information in order to make an informed decision prior to entering into any settlement agreement whereby the plaintiff would forfeit his rights to future compensation for his injuries.
54. Due to the defendant's breach, the plaintiff has suffered financial loss.

REQUEST FOR RELIEF

1. That this Court, under Count VII, enter judgment in favor of the plaintiff against the defendant for breach of fiduciary duty
2. For such other relief as this Court deems appropriate.

COUNT VIII

(Dennis Dimon v. Latti & Anderson LLP -
Negligence)

55. Paragraphs 1-54 are realleged and incorporated by reference.
56. A lawyer has a duty to act with reasonable care and to use the skill of a reasonably competent lawyer in representing a client.
57. The defendant failed to act reasonably in not informing the plaintiff and ensuring that the plaintiff understood the changes to the settlement agreement.
58. Due to the actions of the defendant, the plaintiff suffered financial loss.

REQUEST FOR RELIEF

1. That this Court, under Count VII, enter judgment in favor of the plaintiff.
2. For such other relief as this Court deems appropriate.

COUNT IX

(Dennis Dimon v. Latti & Anderson LLP -
Breach of Contract)

59. Paragraphs 1-58 are realleged and incorporated by reference.
60. The plaintiff and the defendant entered into a contract for whereby the defendant was to provide legal representation for injuries suffered by the plaintiff in a fishing accident.
61. The defendant breached this contract by failing to provide competent legal representation, failing to inform the plaintiff of changes to the plaintiff's settlement agreement, and failing to ensure that the plaintiff understood the changes to the settlement agreement.
62. The plaintiff suffered financial losses as a result of the defendant's breach of contract.

REQUEST FOR RELIEF

1. That this Court, under Count IX, enter judgment in favor of the plaintiff against the defendant for breach of contract.
2. For such other relief as this Court deems appropriate.

COUNT X

(Dennis Dimon v. Metropolitan Life Insurance Company -
Breach of Contract)

63. Paragraphs 1-62 are realleged and incorporated by reference.
64. The plaintiff and the defendant entered into a contract whereby the defendant was to provide a lifetime annuity guaranteed for twenty (20) years in exchange for the plaintiff releasing all claims for injuries suffered by the plaintiff in a fishing accident.
65. The defendant breached this contract by altering the agreement after the contract was

signed and approved by the court and for failing to perform the contract.

66. The plaintiff suffered financial losses as a result of the defendant's breach of contract.

REQUEST FOR RELIEF

1. That this Court, under Count X, enter judgment in favor of the plaintiff against the defendant for breach of contract.
2. For such other relief as this Court deems appropriate.

COUNT XI

(Dennis Dimon v. Metropolitan Life Insurance Company -
Negligent Misrepresentation)

67. Paragraphs 1-66 are realleged and incorporated by reference.
68. The plaintiff and the defendant entered into a contract whereby the defendant was to provide a lifetime annuity guaranteed for twenty (20) years in exchange for the plaintiff releasing all claims for injuries suffered by the plaintiff in a fishing accident.
69. The defendant negligently misrepresented the terms of the contract, stating that the contract was for life, guaranteed for 20 years.
70. The plaintiff relied on the representation of counsel and this defendant as manifested in the original contract approved by the court and suffered financial losses as a result of the defendant's negligent misrepresentation in altering the contract.

REQUEST FOR RELIEF

1. That this Court, under Count XI, enter judgment in favor of the plaintiff against the defendant.
2. For such other relief as this Court deems appropriate.

COUNT XII

(Dennis Dimon v. Kemper Insurance Company -
Breach of Contract)

71. Paragraphs 1-70 are realleged and incorporated by reference.
72. The plaintiff and the defendant entered into a contract whereby the defendant was to provide a lifetime annuity guaranteed for twenty (20) years in exchange for the plaintiff releasing all claims for injuries suffered by the plaintiff in a fishing accident.
73. The defendant breached this contract by altering the agreement after the contract was signed and approved by the court and for failing to perform the contract.
74. The plaintiff suffered financial losses as a result of the defendant's breach of contract.

REQUEST FOR RELIEF

1. That this Court, under Count XII, enter judgment in favor of the plaintiff against the defendant for breach of contract.
2. For such other relief as this Court deems appropriate.

COUNT XIII

(Dennis Dimon v. Kemper Insurance Company -
Negligent Misrepresentation)

75. Paragraphs 1-74 are realleged and incorporated by reference.
76. The plaintiff and the defendant entered into a contract whereby the defendant was to provide a lifetime annuity guaranteed for twenty (20) years in exchange for the plaintiff releasing all claims for injuries suffered by the plaintiff in a fishing accident.
77. The defendant negligently misrepresented the terms of the contract, stating that the contract was for life, guaranteed for 20 years.
78. The plaintiff relied on the representation of counsel and this defendant as manifested

in the original contract approved by the court and suffered financial losses as a result of the defendant's negligent misrepresentation in altering the contract.

REQUEST FOR RELIEF

1. That this Court, under Count XIII, enter judgment in favor of the plaintiff against the defendant.
2. For such other relief as this Court deems appropriate.

COUNT XIV

(Dennis Dimon v. Miryan Stanley -
Breach of Contract)

79. Paragraphs 1-78 are recited and incorporated by reference.
80. The plaintiff and the defendant entered into a contract whereby the defendant was to provide a lifetime annuity guaranteed for twenty (20) years in exchange for the plaintiff releasing all claims for injuries suffered by the plaintiff in a fishing accident.
81. The defendant breached this contract by altering the agreement after the contract was signed and approved by the court and for failing to perform the contract.
82. The plaintiff suffered financial losses as a result of the defendant's breach of contract.

REQUEST FOR RELIEF

1. That this Court, under Count XIV, enter judgment in favor of the plaintiff against the defendant for breach of contract.
2. For such other relief as this Court deems appropriate.

COUNT XV
(Dennis Dinton v. Morgan Stanley -
Breach of Fiduciary Duty)

83. Paragraphs 1-81 are realleged and incorporated by reference.
84. A broker has a duty to act in the best interest of his client and not to act in any way adverse or contrary to the interests of the client.
85. The plaintiff relied upon the defendant for advice, counsel, and information in order to make an informed decision prior to entering into any settlement agreement whereby the plaintiff would forfeit his rights to future compensation for his injuries.
86. Due to the defendant's breach, the plaintiff has suffered financial loss.


REQUEST FOR RELIEF

1. That this Court, under Count XV, enter judgment in favor of the plaintiff against the defendant for breach of fiduciary duty
2. For such other relief as this Court deems appropriate.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS.

Respectfully submitted
By his attorney

DATED: MAY 20, 2005


David B. Kaplan, Esq.
THE KAPLAN/BOND GROUP
88 Black Falcon Avenue
Suite 301
Boston, MA 02210
(617) 261-0080
BBQ #258540

Check Ink

83A08153

ANNUITY LOCATION

CHARTER SECURITY LIFE INSURANCE COMPANY, NEW YORK, 720 FIFTH AVENUE, NEW YORK, N.Y.

Name of Annuitant (please print) ☒ Male ☐ Female

Dennis J. Dixon

B. Type of Contract Single Premium Deferred Annuity

10. Single Premium Amount \$ 175,000.

Date and Place of Birth

12/9/59 So. Kingstown, RI

11. Maturity Age ☐ 65 ☐ 70 1/2 ☐ Other Immediate 6/15/83

Residence (No., Street, City, State and Zip Code)

Laurel Lane, West Kingston, RI 02892

12. Will this annuity replace or change any existing life insurance or annuity contract? ☐ Yes ☒ No If yes, give name of company, policy number, and plan of life insurance or annuity.

Business Address (include Name of Employer)

Mail Notices to ☐ Residence ☐ Business ☐ Owner

Social Security No. 036-44-8733

Owner (if other than Proposed Annuitant)

Name: American Motorists Insurance Co.

Relationship:

Address:

Social Security Tax Payer I.D. No. 36-0727430

☐ Contingent Owner

13. Is this contribution for a tax qualified plan? ☐ Yes ☒ No If so, contract will be issued with a limitation on transferability to conform with IRS regulations. (Check appropriate box for type of qualified plan.)

☐ I.R.A. Rollover ☐ Corporate pension or profit sharing plan
☐ T.S.A. Exchange ☐ Terminal Funding
☐ H.R. 10 Exchange ☐ Other

14. Special Requests Immediate Annuity
20yr Certain - 3% interest
\$175,000 = 1456.45 per month
(first) - 571

Beneficiary and Relationship

Primary: Katherine I. Dixon.

Contingent: Jessica I. Dixon. - Daughter
Rebecca Lee Dixon. - Daughter

15. Amendments and Corrections (For Home Office use only)

Quote Number 50113

undersigned represent(s), to the best of his (her) knowledge and belief, that the foregoing statements and answers are complete, true, and correctly recorded and agree(s) to be bound by statements and answers made or to be made in this application. The undersigned further expressly agree(s) as follows: This application and any policy issued in consequence of it shall constitute the entire contract. No agent is authorized to make or modify contracts, to waive any of the company's rights or requirements or to bind the Company by giving or receiving any promise, representation or information, unless the same be in writing, submitted to the Company, and made a part of such policy.

2. Acceptance of any contract(s) issued on the basis of this application shall constitute a ratification and acceptance of any change, correction, addition or amendment noted by the company in the "Amendments and Corrections" section except that in those jurisdictions where it is required any change in amount or benefits shall require a written consent by the Proposed Annuitant and by the Applicant if other than the Proposed Annuitant.

I, S. Dixon of NY this 4th day of May 1983

Signature of Annuitant

Dennis J. Dixon

Paul G. Viscardi
Agent Signature (1)

621-61
Code

Applicant if other than Annuitant

APPROVED BY

Please Print Name of Agent (1)

By

Signature and Title

Agent Signature (2)

Code

D. J. W. Ter Reynold
Please Print Name of General Agency

Please Print Name of Agent (2)

0000100

SUPPLEMENTARY AGREEMENT

(No. 501126.)

by Charter Security Life Insurance Company (New York) on the life of Dennis Dimon used
the undersigned hereby requests that the aggregate net proceeds payable under said policy(s) as of the termination date be paid
to the payees designated in, and in the order and manner provided in, the following Table or Tables and in the General Provisions
of this Agreement.

The undersigned surrenders said policy(s) to the Insurance Company and, concurrently herewith, revokes any beneficiary designa-
tion and any election of settlement heretofore made under the said policy(s).

PAYEE	MANNER OF PAYMENT	PAYMENTS
TABLE 1 SECTION ONE - PRIMARY PAYEE Dennis Dimon Laurel Lane West Kingston, RI 02892	Monthly payments in the amount of \$1,450.65, increasing 3% annually, for a period of 240 months only.	
SECTION TWO-CONTINGENT PAYEE Katherine J. Dimon, wife	In the same manner as the Primary Payee, for the specified period.	

000020



Lumbermens Mutual Casualty Company • American Motorists Insurance Company
American Manufacturers Mutual Insurance Company • American Protection Insurance Company

Long Grove, IL 60049 • 312/540-2000

August 12, 1983

Mr. Robert A. Foley
Dean Witter Reynolds, Inc.
One Boston Place
Boston, Massachusetts 02108

Dear Mr. Foley:

DENNIS DIMON
CHARTER SECURITY POLICY NO: 83 A 08153
OUR FILE NO: 399 LM 106125-Z

I received the replacement policy issued by Charter Security Life Insurance Company (New York) changing the terms of the annuity from 240 months certain and life thereafter to 240 months certain only.

I am advised by Mr. Hughes of Lattie Associates that your quotation was to provide an annuity which would pay \$1,450.45 per month for the first year increasing annually at a rate of 3% compounded annually for 240 months certain and life thereafter for a single premium of \$175,000. This was the benefit to be provided under the terms of a general release and settlement agreement approved by Judge Pettine of the United States District Court for the District of Rhode Island.

The agreed upon premium was paid and a policy issued which is now in the files of the contract owner, American Motorists Insurance Company, providing benefits required by the release, settlement agreement and court order. I consider the original annuity contract valid and enforceable and will retain it in our files.



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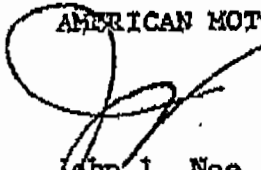
Mr. Robert A. Foley
August 12, 1983

-2-

I intended to return the replacement contract issued by
Barbara Boehm of Charter Security, but it was lost with
my briefcase on August 11, 1983.

Very truly yours,

AMERICAN MOTORISTS INSURANCE COMPANY



John L. Noe
Home Office Claim

JLN:bw

cc: Ms. Barbara Boehm
Vice President
Charter Security Life Insurance Company
(New York)
720 Fifth Avenue
New York City, New York 10019

Mr. Roger Hughes
Lattie Associates, Attorneys
30-31 Union Wharf
Boston, MA 02109

000026



Charter Security Life Insurance Company (New York)
720 Fifth Avenue
New York, New York 10019
Telephone 212-397-2330

September 26, 1983

Mr. John L. Noe
Home Office Claim
American Motorists
Insurance Company
Long Grove, Illinois 60049

Re: Dennis Dimon - Policy No. 83 A 08153
Your File No. 399 LM 106125-2

Dear Mr. Noe:

I am in receipt of your letter to Barbara Boehm, Vice President of Charter Security Life Insurance Company (New York ("CSL(NY)"), regarding the annuity policy (Policy No. 83 A 08153) issued by CSL(NY) to Dennis Dimon.

According to information you received from Mr. Hughes of Lattie Associates, Robert Foley of Dean Witter Reynolds, Inc., allegedly offered to provide Mr. Dimon with a CSL(NY) annuity which would pay \$1,450.45 per month for the first year increasing annually at a rate of 3% compounded annually for 240 months certain and life thereafter based on a single premium of \$175,000.00.

Contrary to the information you received from Mr. Hughes, there is nothing to indicate that anything other than a single premium immediate annuity with a 20 year (i.e., 240 months) certain period was applied for. As you can see from the attached copy of Mr. Dimon's application, which American Motorists Insurance Company signed as applicant, a 20 year certain policy was applied for. I have also attached for your reference, a copy of a quotation sheet from CSL(NY) to Mr. Foley which clearly shows that CSL(NY)'s quote was based on the issuance of a certain period annuity without a life option. As previously explained by Ms. Boehm in her letter to Mr. Kurt Snyder of Dean Witter Reynolds dated July 14, 1983 (see enclosed copy), the option indicated on the Supplementary Contract originally sent to Dean Witter Reynolds on June 17, 1983 for delivery to your office was incorrectly typed as a 240 month certain and life thereafter annuity instead of 240 months only. Again, on behalf of CSL(NY), I apologize for this oversight.

000027

Mr. John L. Noe
Page 2
September 26, 1983

Based on the foregoing, CSL(NY) guarantees to continue to pay Mr. Dimon under the terms of his policy a \$1,450.45 monthly annuity during the first policy year, which will increase annually at a rate of 3% compounded annually for 240 months certain. No payments will be made beyond the expiration of the 240 month period. Accordingly, the original Supplementary Contract mailed to Robert Foley and in your possession is null and void. I would appreciate your returning that contract to:

Barbara Boehm
Vice President
Policyowner Service Department
Charter Security Life
Insurance Company (New York)
720 Fifth Avenue
New York, New York 10019

By copy of this letter, I am instructing Ms. Boehm to send to your attention a correct copy of the Supplementary Contract for Dennis Dimon which you stated was lost with your briefcase on August 11, 1983.

If I can be of any further assistance in this matter, please do not hesitate to contact me at the above address.

Very truly yours,

Robert Liguori
Counsel

RL/spf
Enclosures

cc: Ms. Barbara Boehm ✓

Mr. Robert A. Foley
Dean Witter Reynolds, Inc.
One Boston Place
Boston, Massachusetts 02108

Mr. Roger Hughes
Lattie Associates, Attorneys
30-31 Union Wharf
Boston, MA 02109

000026



Lumbermens Mutual Casualty Company • American Motorists Insurance Company
American Manufacturers Mutual Insurance Company • American Protection Insurance Company

Long Grove, IL 60049 - 312/540-2000

October 10, 1983

Mr. Robert Liguori, Counsel
Charter Security Life Insurance
Company (New York)
720 Fifth Avenue
New York, New York 10019



Dear Mr. Liguori:

DENNIS DIMON
CHARTER SECURITY POLICY: 83A08153
OUR FILE NO: 399 LM 106125-Z


In reply to your September 26, 1983, Sections 14 and 15
of the application that I signed were blank. The entries
now appearing were filled in after I returned the signed
application.

The original annuity policy received was for a term of
240 months certain and life thereafter as ordered and
agreed upon between Mr. Hughes and Mr. Foley. Your agent,
Mr. Foley further confirmed this to me by telephone in
April, 1983. May I suggest you contact him to verify
this?

I intend to retain the original policy in our files and
consider it to be valid and enforceable.

Very truly yours,

AMERICAN MOTORISTS INSURANCE COMPANY


John L. Noe
Home Office Claim

JLN:ml

cc: Mr. Robert A. Foley
Dean Witter Reynolds, Inc.
One Boston Place
Boston, MA 02108

Mr. Roger Hughes
Latti Assoc., Attorneys
30-31 Union Wharf
Boston, MA 02109

cc: Ms. Barbara Boehm
Vice President
Policyowner Service Dept.
Charter Security Life
Insurance Co. (New York)
720 Fifth Avenue
New York, NY 10019

000029



Lumbermens Mutual Casualty Company • American Motorists Insurance Company
American Manufacturers Mutual Insurance Company • American Protection Insurance Company

Long Grove, IL 60049 • 312/540-2000

October 12, 1983

Ms. Barbara Boehm, Vice President
Policyowner Service Department
Charter Security Life Insurance Company (New York)
720 Fifth Avenue
New York, New York 10019

Dear Ms. Boehm:

RE: DENNIS DIMON
CONTRACT NO. 83408153
OUR FILE NO. 399 LM 156125 Z

In reponse to your October 14, 1983 I reject and return
herewith the Supplementary Agreement and General Provisions
attached thereto. The original annuity policy will be re-
tained in the files of American Motorists Insurance
Company and considered valid and enforceable.

Very truly yours,

AMERICAN MOTORISTS INSURANCE COMPANY

John L. Noe
Home Office Claims

JLN/lz

cc: Mr. Roger Hughes
Latti Associates, Attorneys
30-31 Union Wharf
Boston, MA 02109

cc: Mr. Robert A. Foley
Dean Witter Reynolds, Inc.
One Boston Place
Boston, MA 02108

000024

Best Quality

September 24 1999

DENNIS DIXON
P O BOX 56
WEST KINGSTON RI 02892 0056

RE: CONTRACT # SCHW1128

Dear Mr. Dixon,

We received a call from Kathryn Dixon requesting information on the above contract. This contract was issued as a structured settlement on 5/5/1983. The owner of this contract is the American Motor Insurance Company. You receive monthly payments until the final payment on 5/5/2002. The monthly payments began on 6/6/1983 and increase 3% annually. This is programmed into the computer to increase 3% annually. I do not have specific payment amounts. To figure payments for the remaining years, increase the payment 3% each June 5.

If you have any questions, please call our Customer Service Center at 1-800-635-7775.

Sincerely,
Teresa Thorp
Teresa Thorp
Annuity Benefits

000033

Clerk ID Prefix: R81 Attn:
Clerk Name: Green, Laura From: TULSA TELESERVICES
Wip Case Number: 000000000 Subject: CALL TO 1-800-MET-5000
Creation Date: 06/05/2003 01:17:54 PM ANNUITY PAYOUTS

POLICY SUFF REF INSURED NAME DATE OF CALL: 06-05-03
000SCIW11 26 Y DENNIS DIMON

CALLER NAME....: KATHERINE DIMON
CALLER STREET...: PO BOX 58
CALLER CITY....: WEST KINGSTON STATE: RI ZIPCODE: 02892 0056
CALLER PHONE....: 401-782-4813 ALTERNATE PHONE: ALT EXT:
RELATIONSHIP....: SPOUSE DO/BR: L03 CALLER SEX: F

NOTES: ANNUITY PAYOUTS: PLEASE SEND A DUPLICATE CONTRACT TO THE
OWNER
AT THE ABOVE ADDRESS.

Not Assigned

Open - Sent/Unassigned

Rush ? ☐ Yes ☒ No

Sent To: IND_ANNUIY PAYOUTS TULSA.

Archive Date: 06/12/2003

Comments:

000032

June 9, 2003

DENNIS DIMON
PO BOX 58
WEST KINGSTON RI 02892 0058

RE: SCIW1126

Dear Mr. Dimon,

This letter is in response to a phone call we received from Katherine Dimon. Since your annuity contract has expired, we are unable to provide you with a duplicate contract. However, the terms of your annuity are described below.

The annuity contract was issued on May 5, 1983 under the "Certain 20 Year" option. American Motorist Insurance Company was considered to be the owner of the annuity, however, you were the annuitant and payee. This contract provided you with a monthly income due on June 5th of each year payable for a total of 20 years (240 monthly payments). The payment amount increased by 3% each year.

The first payment was on June 5, 1983. The final payment was on May 5, 2003.

If you have any questions, please call our customer service center at 1-800-635-7775.

Sincerely,

Sandy Franklin

Sandy Franklin
Annuity Payout Specialist III
Annuity Administration Operations

000034

2006 JUN 23 AM 6:04

RECEIVED

I Dennis J Dimon would like
to have a copy of my annuity
contract. I was told on the
phone that if I wrote this
letter to you that you will
sent me a duplicate contract
sent asap "Thank you!"

Dennis J Dimon
Dennis Dimon

RE SCIWI126

06/19/03

000035

99 Fortin Road
Kingston, RI 02881
Phone: (401) 788.8277
Fax: (401) 788.8278

FAX

icopy

JUN 12 2003

To: CAROLYN LATTIE From: Dennis Dimon
Fax: 1-617-523-7394 Pages: _____
Phone: _____ Date: 6/12/03
Ref: _____ CC: _____

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

* Comments:

Metropolitan Life Insurance Company
Annuity Administration Operations
12902 East 51st Street, PO Box 22053, Tulsa, OK 74121-2053

MetLife®

June 9, 2003

DENNIS DIMON
PO BOX 56
WEST KINGSTON RI 02892 0056

ATT
CAROLynn
Lattie

RE: SCIW1126

Dear Mr. Dimon,

This letter is in response to a phone call we received from Katherine Dimon. Since your annuity contract has expired, we are unable to provide you with a duplicate contract. However, the terms of your annuity are described below.

The annuity contract was issued on May 5, 1983 under the "Certain 20 Year" option. American Motorist Insurance Company was considered to be the owner of the annuity, however, you were the annuitant and payee. This contract provided you with a monthly income due on June 5th of each year payable for a total of 20 years (240 monthly payments). The payment amount increased by 3% each year.

The first payment was on June 5, 1983. The final payment was on May 5, 2003.

If you have any questions, please call our customer service center at 1-800-635-7775.

Sincerely,

Sandy Franklin

Sandy Franklin
Annuity Payout Specialist III
Annuity Administration Operations

ATT. Carolyn Little

DEAN WITTER REYNOLDS INC.
One Boston Place, Boston, MA 02108 Telephone (617) 723-5500

April 8, 1983

PROPOSAL BY
CHARTER SECURITY LIFE INSURANCE COMPANY
OF NEW JERSEY
FOR A
LIFE ANNUITY 20 YEAR CERTAIN
UNDER A STRUCTURED ANNUITY SETTLEMENT
OF \$1,450.45 PER MONTH FOR THE FIRST
YEAR AND IT WOULD INCREASE 3%
PER YEAR AS FOLLOWS:

2ND YEAR	\$1,493.96
3RD YEAR	\$1,538.78
4TH YEAR	\$1,584.95x
5TH YEAR	\$1,632.49
6TH YEAR	\$1,681.47
7TH YEAR	\$1,731.91
8TH YEAR	\$1,783.97
9TH YEAR	\$1,837.38
10TH YEAR	\$1,892.51
20TH YEAR	\$3,418.08
30TH YEAR	\$4,593.61
40TH YEAR	\$6,173.43
50TH YEAR	\$8,144.15

A. M. BEST RATING

06-12-03

DENNIS J. DIMON
KATHERINE I. DIMON

151 Holly Ridge RD.
PO Box 56
WEST Kingston RT.
02892

ATTN.
CAYLON
JATTIE

401-782-4613 Home Phone
401-207-9197 Cell Phone

CHARTER SECURITY LIFE INSURANCE Co.

We had the understand that my
WIFE WAS TO collect this check up to
20 years and if anything happen to me
AND I WAS TO collect it FOR 50 YEARS

THANK YOU

Dennis Dimon
[Signature]

THE KAPLAN / BOND GROUP

David B. Kaplan
Thomas M. Bond
Andrew S. Kaplan
Tracey N. Kaplan

Attorneys at Law and Proctors in Admiralty
Boston Fifth Floor West Building, Suite 304
Dorset, Massachusetts 02210
(617) 261-0080 FAX (617) 261-1338

Counsel
Williamson & Melander

September 13, 2004

Metropolitan Life Insurance Company
P.O. Box 22053
Tulsa, OK 74121-2053

Dear Sir/Madam,

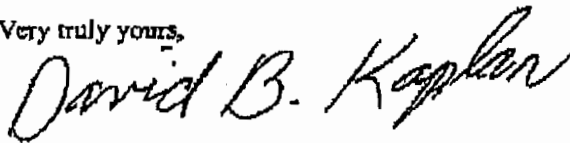
Please be advised that I have been retained by Mr. Dennis Dimon, Holly Ridge Road, South Kingston, R.I., who entered into a Structured Settlement Contract with your company (see EXHIBIT #2) in 1983.

From my review of the document (a copy of which I have enclosed), it seems that the contract is for "life" and that there was a 20 year guarantee. Mr. Dimon has stated that he has not received his payments since 2/5/03 and that he has been unable to speak to anyone employed by you to determine present status.

Accordingly, I would appreciate your immediate response including a copy of all documents filed in this matter.

Thank you in anticipation of your cooperation.

Very truly yours,



DAVID B. KAPLAN

DBK/cms

Enclosure

cc: : Dennis Dimon

: Frederick W. Benson

000037

THE KAPLAN / BOND GROUP

David B. Kaplan
Thomas M. Bond
Tracey N. Kaplan

Attorneys at Law and Proctors in Admiralty
22 Black Falcon Avenue, Suite 301
Boston, Massachusetts 02210

(617) 1261-0080
Fax (617) 1261-1558

September 28, 2004

Metropolitan Life Insurance Company
P.O. Box 22053
Tulsa, OK 74121-2053

Dear Sir/Madam:

RE: Mr. Dennis Dimon

Dear Sir/Madam:

On September 13, 2004 I communicated with you regarding the above-referenced matter (copy enclosed), and you have not responded.

I shall diary this matter for November 10, 2004 at which time if I have not received any response as requested I shall file suit to enforce the obligation herein.

Very truly yours,

David B. Kaplan /rci

DAVID B. KAPLAN

DBK/rci

Enclosure

cc: Dennis Dimon
Frederick W. Benson

000040

~~NOVEMBER 16, 2004~~
NOVEMBER 16, 2004

To Whom It May Concern:-

I, Dennis J. Dimon, hereby authorize David B. Kay, Esq.
to act for me in all matters relating to my structured settlements.

[Signature]
Witness
151 Holly Ridge RD
W Kingston RI 02892
Address

[Signature]
Witness
16 Pine L Lane
W Kingston RI 02892
Address

Name Dennis D.
Address

151 Holly Ridge RD
W Kingston RI
02892

000046

UNITES STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-11073 WGY

DENNIS DIMON,)
Plaintiff)
vs.)
)
METROPOLITAN LIFE)
INSURANCE COMPANY, KEMPER)
INSURANCE COMPANY,)
MORGAN STANLEY DW, INC., and)
MICHAEL B. LATTI, LATTI)
ASSOCIATES, LATTI & ANDERSON)
LLP,)
Defendants)

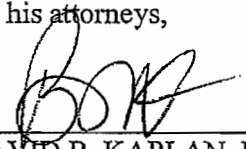
PLAINTIFF'S EXPERT WITNESS DISCLOSURES

Pursuant to Fed.R.Civ.P. 26(a)(2), the Plaintiff discloses the following expert witness who may be called upon to testify at trial on his behalf:

1. Hans R. Hailey
Law Offices of Hans R. Hailey
225 Friend Street, 5th Floor
Boston, MA 02114

With respect to the proposed expert testimony of Hans R. Hailey, please find enclosed his signed report, Curriculum Vitae and a fee schedule. Mr. Hailey has not testified as an expert at trial or by deposition within the past four years.

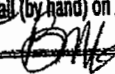
Respectfully submitted,
For the plaintiff,
By his attorneys,



DAVID B. KAPLAN, BBO #258540
BRIAN KEANE, BBO #656717
THE KAPLAN/BOND GROUP
88 Black Falcon Avenue, Suite 301
Boston, Massachusetts 02210
(617) 261-0080

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each party by mail (by hand) on 11/22/06



DAVID B. KAPLAN, BBO #258540

Dated: November 22, 2006

Law Offices of Hans R. Hailey

Attorneys at Law
225 Friend Street, 5th Floor
Boston, Massachusetts 02114

hhailey@erols.com

(617) 723-4010 Fax (617) 720-6012

www.haileylaw.com

Hans R. Hailey
Gene R. Charny

November 10, 2006

Brian Keane, Esquire
The Kaplan/Bond Group
85 Black Falcon Avenue, Suite 301
Boston, Massachusetts 02210

RE: *Dimon v. Michael Latti, Latti Associates, Latti & Anderson LLP, Metropolitan Life Ins. Co., Kemper Ins. Co. And Morgan Stanley, DW, Inc.*
U.S.D.C. Civil Action No. 05-11073-REK

Dear Mr. Keane:

Thank you for inviting me to serve as an expert witness. More specifically, you would like me to address the issue of whether the representation of Dennis Dimon by Latti Associates was negligent because of its failure to insure that Mr. Dimon's annuity was limited to twenty years and did not continue for the rest of his life. My short answer is that Latti Associates was indeed negligent.

Let me start by listing the materials I reviewed, all of which you provided.

MATERIALS CONSIDERED:

1. Charter Security Life Insurance Company annuity application;
2. Supplementary Agreement;
3. Letter from Barbara Boehm to Kurt Snyder dated July 14, 1983;
4. Letter from John Noe to Robert Foley dated August 12, 1983;
5. Letter from Robert Liguori to John Noe dated September 26, 1983;
6. Letter from John Noe to Robert Liguori dated October 10, 1983;
7. Letter from John Noe to Barbara Boehm dated October 12, 1983;
8. Letter from Barbara Boehm to John Noe dated October 14, 1983;

Brian Keane, Esquire

November 10, 2006

Page Two

9. A settlement sheet from Latti and Associates date of settlement on April 19, 1983;
10. A transcript of the Guardian Ad Litem hearing dated May 3, 1983;
11. A proposal by Charter Security Life Insurance Company of New Jersey dated April 8, 1983;
12. The docket from the U.S District Court for the District of Rhode Island for Docket No. 81-0063;
13. Letter from David B. Kaplan to Roger E. Hughes, Esq. Dated December 2, 2005;
14. Letter from Sandra Sue McQuay to Roger E. Hughes Jr., Esq. Dated April 13, 2006;
15. The Subpoena in a civil case from the U.S. District Court, case number: 05-11073;
16. Deposition of Roger E. Hughes, Jr. Dated May 10, 2006; and
17. Deposition of Michael B. Latti dated July 25, 2006.

FACTS:

The facts upon which my opinions are based begin with Mr. Dimon's loss of an eye. Latti Associates, as it was known in 1983, represented him in a claim against the Jenny C., Inc. Latti Associates concentrated in representing plaintiffs in personal injury claims. The claim was handled pursuant to a written contingent fee agreement. Suit was filed in the U.S. District for the District of Rhode Island and went to trial in February 1983.

Joseph Flannery, a limited partner in Latti Associates, represented Dimon at trial and secured a judgment in excess of \$700,000. As a result of post trial motions filed by the defendant, a settlement was reached in April, 1983. Mr. Flannery had by that time left the firm and Roger Hughes, also a partner in the firm, undertook Mr. Dimon's representation.

A release was signed and Judge Pettine held an initial hearing to approve the settlement. Being uneasy about the ability of Mr. Dimon to appreciate the settlement fully and to agree to it voluntarily, he asked attorney Leonard Decof to serve as guardian ad litem. In May 1983, a hearing was held and Mr. Decof report to Judge Pettine the details of the settlement and that Mr. Dimon fully comprehended the settlement and was happy to accept it.

The settlement was for an immediate payment of \$250,000 and monthly payments

Brian Keane, Esquire
November 10, 2006
Page Three

for the rest of his life, with a guaranteed minimum of 20 years of payments. The payments were to be in the initial amount of \$1,450 per month and were to increase by three per cent each year. A "Proposal By Charter Security Life Insurance Company of New Jersey" indicated the monthly payments would increase to \$6,173.43 by the 50th year. Mr. Dimon was 23 years old at the time of this settlement and had a life expectancy of 49.7 years. The settlement had a total value of \$425,000, which was almost as much as the insurance coverage available.

Based on this settlement, Latti Associates received a fee of \$141,485.47, plus reimbursement of the expenses it advanced. About \$200 was shaved off the fee to accommodate Mr. Dimon's hope to recover \$100,000 of the \$250,000 due immediately.

American Motorists Insurance Company, part of the Kemper Group, insured the defendant. It purchased the annuity from Charter Security Life Insurance Company through Robert Foley at Dean Witter Reynolds, Inc. American Motorists was the owner of the policy.

An annuity contract was sent to Mr. Foley in June, 1983. As provided by the settlement, the annuity was to pay Mr. Dimon monthly for the rest of his life and guaranteed payments for at least twenty years.

A month later, the fun began. Barbara Boehm, of Charter Security, wrote to Kurt Snyder of Dean Witter. In a curt letter, she said simply that a "clerical error" had been made in issuing the annuity for life, that it should have been limited to twenty years. She sent a new annuity contract and asked that the earlier contract be returned.

That triggered letters between Charter Security and American Motorists. Roger Hughes was sent a copy of each letter; those copies were mailed to the proper address. American Motorists took the position that the initial annuity was valid and refused to return that policy as requested. Unfortunately, Charter Security took a different position and terminated payments after twenty years.

There was no further correspondence after last of these letters, which is dated October 14, 1983.

Missing in the correspondence and the depositions is any reference to any action taken by Latti Associates. They never communicated, by phone or by letter, any

Brian Keane, Esquire
November 10, 2006
Page Four

insistence on compliance with the terms of the settlement. They apparently never communicated with their client that there was an issue with the annuity.

Neither Mr. Hughes nor Mr. Latti have any memory of taking any action to enforce the terms of the settlement. According to Mr. Hughes, even though his appearance was never withdrawn, he wouldn't have done anything in these circumstances; he accepted it as a dispute between two insurance companies. He would have intervened only if the insurance company didn't pay what it was obligated to pay.

Mr. Latti had very much the same mind set. However, he believed that he was powerless to take any action because, in his opinion, Massachusetts does not accept the doctrine of anticipatory breach, meaning that no action could be maintained before the time for performance had passed. Accordingly, he had no duty to take any action to enforce the contract (the settlement).

OPINIONS:

By failing to take any action to enforce the terms of the settlement, Latti Associates¹ breached its duty to its client, served its client in a manner below the standard of care of the average qualified personal injury attorney and may have violated the present version of the Rules of Professional Conduct.

Having undertaken to represent Dimon and for so long as Latti Associates did represent him, it was obligated to represent him zealously and not neglect his claim. Both Mr. Hughes and Mr. Latti acknowledged in their depositions that it was their job to obtain as much money for their client as possible.

Having negotiated a settlement, the duty of Latti Associates was to ensure that the settlement terms were fulfilled. More specifically, by the settlement Mr. Dimon released his claims in exchange for a lifetime annuity (along with a present cash payment). Indeed, Latti Associates took its full fee based on the settlement. When the controversy

¹ By "Latti Associates," I mean Mr. Hughes and Mr. Latti, the two partners of the firm in 1983. I express no opinion about whether the present day version of that firm is responsible for the acts of the prior partners. Of course, however, as partners, Mr. Latti and Mr. Hughes are responsible for each other's acts.

Brian Keane, Esquire
November 10, 2006
Page Five

arose over whether the annuity would be limited to twenty years, Latti Associates had the duty to take those steps reasonably necessary to ensure that the annuity would continue for life. By accepting the controversy as one simply between two insurance companies and having failed to do anything, Latti Associates breached both its legal and contractual duty to its client. The result was that the annuity payments ended after twenty years.

The duty to its client was also breached by having failed to inform Mr. Dimon of the dispute. An attorney has a duty to keep his clients informed of important developments in the client's case. The dispute being unknown to Mr. Dimon, he lost his opportunity to insist the dispute be resolved (or hire new counsel to do so) and thereby avoid the interruption in his annuity.

The standard practice of personal injury attorneys often includes services after the settlement of a client's claim. Often, for example, a lien, such as a Medicare lien, needs to be negotiated, or judicial approval of a settlement needs to be obtained. These services are part of the job a personal injury attorney accepts. Moreover, an additional fee is not charged; payment for such services is included in the contingent fee charged. Having done nothing when the controversy arose, Latti Associates' services (post settlement) fell below the standard of the average qualified personal injury attorney.

As a further matter, the failure to intercede in the controversy may have violated the Professional Rules of Conduct, or, more particularly the Disciplinary Rules in effect in 1983. Disciplinary Rule 2-110 provided in part:

“a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.”

Dimon was prejudiced by Latti Associates' termination of services at the time that the controversy arose. The prejudice was very foreseeable. Mr. Dimon did not receive the benefit of his bargain and his annuity terminated.

As a final matter, I'd like to address Mr. Latti's concern that there would have

Brian Keane, Esquire
November 9, 2006
Page Six

been nothing he could do in 1983, that Mr. Dimon would have to wait until the annuity terminated because of the defense based on the doctrine of anticipatory breach. The concern is unfounded. That doctrine has sufficient exceptions to allow an action to enforce the settlement agreement. See, e.g. c. 106, §2-610. More to the point, this was a written settlement agreement and such agreements are enforceable even if unwritten. *Peters v. Wallach*, 366 Mass. 622, 628 (1975). More concretely, the controversy involved an actual breach of the contract in 1983. Charter Security initially provided a written annuity contract for life, but then disowned that contract and replaced it with one limited to twenty years. That breach was enforceable in 1983.

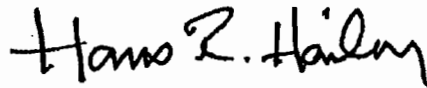
FEE SCHEDULE:

Services will simply be billed at the rate of \$420 per hour. No retainer will be required and there will be no minimum charge for testimony at a deposition or trial.

PRIOR TESTIMONY:

I have not testified at deposition or at trial in the prior four years, with the exception of my testimony at the trial of the 93A/176D claim in *Bobick v. U.S.F. & G. et al*, Suffolk Superior Court No. 94-5753B. My testimony was not as an expert, but rather involved my handling of the underlying tort claims.

Very truly yours,

A handwritten signature in black ink that reads "Hans R. Hailey". The signature is written in a cursive, slightly stylized font.

Hans R. Hailey

HRH/at
Enclosure: Resume

HANS R. HAILEY

OFFICE: 225 Friend Street, 5th Floor
Boston, Massachusetts 02108
Tel. (617) 723-4010

HOME: 74 Highview Street
Westwood, Massachusetts 02090
Tel. (781) 769-8035

EDUCATION: BOSTON UNIVERSITY SCHOOL OF LAW, Boston,
1973 - 1976: Massachusetts - J.D., June, 1976

1968-1973: BOSTON UNIVERSITY, Boston, Massachusetts
B.A., June, 1973. Major: Psychology.

**BAR
ADMISSIONS:** Massachusetts (admitted January, 1977);
United States District Court for the
District of Massachusetts (admitted May, 1977);
United States Court of Appeals for
the First Circuit (admitted March, 1978);
Land Court Examiner (appointed March, 1979);
United States Supreme Court (admitted May, 1993).

EMPLOYMENT:
1977 to present *Law Offices of Hans R. Hailey.* Private practice of
law. My practice is not limited to a specialty,
but concentrates in personal injury and domestic
relations law.

1974 to 1975: *Boston University Center for Law and Health
Sciences* - Research Assistant for the Center's
Director.

**BAR
ASSOCIATION
MEMBERSHIPS:** Massachusetts Bar Association: Boston Bar Association,
(member, Family Law Committee);

HANS R. HAILEY - - - Page Two

ACTIVITIES:

- 1972 TO 1975: Co-founder of Paraplegia Research Foundation
Paracure, Inc., a non-profit foundation organized to stimulate and support basic scientific research which may lead to cure for paraplegia.
- 1977: Volunteer attorney., Cambridgeport Problem Center
The Cambridgeport Problem Center offers free legal and low-cost counseling services.
- 1978 to 1982: Member, Massachusetts Architectural Barriers Board
(Chairman in 1980). Appointed by Governor Dukakis. The Architectural Barriers Board promulgates and enforces the specialized building code which requires public buildings to be accessible to handicapped persons.
- 1979 to 1987: Member Board of Trustees, Boston Center for Independent Living
(Chairman of the Board, 1980-1982 and 1986-1987). The Boston Center for Independent Living trains and assists severely physically disabled persons to live independently rather than in institutions.
- 1980: Member, Ad Hoc Chapter 595 Advisory Committee
The Committee was formed for the purpose of drafting regulations for the Massachusetts Commission Against Discrimination. Chapter 505, Acts of 1980 prohibits discrimination against the handicapped in places of public accommodation.
- 1980: Member, Subcommittee on The Physically Disabled
Franklin N. Flachsen Judicial Institute.
- 1982 and 1984 Candidate for Democratic Nomination for State Representative from the 10th Suffolk District
(West Roxbury and Roshndale).

Selected by Boston Jaycees as one of 1981's Ten Outstanding Young Leaders;
1995 to present: Certified Civil Trial Specialist, certified by the National Board of Trial Advocacy

To: FILE

From:

MARY GRACI

STRUCTURED SETTLEMENT CHECK OFF SHEET

File#

399 LM 1061252

Insd.

Members of Point Judith Fishermans Corp.

Clmt.

Dennis Jay Dimon

Settlement Report

8-26-83

Annuity Policy

Charter Security Life Ins. Co.

Settlement Agreement

4-18-83

Dismissal of Suit

4-18-83